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FEDERAL REGISTER

Vol. 88 Monday

No. 5 January 9, 2023

Pages 1133–1322

OFFICE OF THE FEDERAL REGISTER

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AO46

Prevailing Rate Systems; Definition of San Mateo County, California, to a Nonappropriated Fund Federal Wage System Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to define San Mateo County, California, as an area of application county to the Monterey, CA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area. This change is necessary because there are three NAF FWS employees working in San Mateo County, and the county is not currently defined to a NAF wage area.

DATES: Effective date: This regulation is effective February 8, 2023. Applicability date: This change applies on the first day of the first applicable pay period beginning on or after February 8, 2023.

FOR FURTHER INFORMATION CONTACT: Ana Paunoiu, by telephone at (202) 606–2858 or by email at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On September 21, 2022, OPM issued a proposed rule (87 FR 57651) to define San Mateo County, California, as an area of application county to the Monterey, CA, NAF FWS wage area.

The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, reviewed and recommended these changes by consensus.

The 30-day comment period ended on October 21, 2022. OPM received one comment in support of the proposal to define San Mateo County, CA, to the Monterey, CA wage area.

Regulatory Impact Analysis

This action is not a ''significant regulatory action'' under the terms of Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under E.O. 12866 and 13563 (76 FR 3821, January 21, 2011).

Regulatory Flexibility Act

OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of nonagency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

Accordingly, OPM is proposing to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. In Appendix D to subpart B, amend the table by revising the wage area listing for the State of California to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

Definitions of Wage Areas and Wage Area Survey Areas

* * * * *

* * * * *

CALIFORNIA

Kern

Survey Area

California:
Kern

Area of Application. Survey area plus:

California:
Fresno
Kings

Los Angeles

Survey Area

California:
Los Angeles

Area of Application. Survey area.

Monterey

Survey Area

California:
Monterey

Area of Application. Survey area plus:

California:
San Mateo
Santa Clara

Orange

Survey Area

California:
Orange

Area of Application. Survey area.

Riverside

Survey Area

California:
Riverside

Area of Application. Survey area.

Sacramento

Survey Area

California:
Sacramento

Area of Application. Survey area plus:

California:
Yuba

Oregon:
Jackson
Klamath

San Bernadino

Survey Area

California:
San Bernadino

Area of Application. Survey area.

San Diego

Survey Area

California:
San Diego

Area of Application. Survey area.

San Joaquin

Survey Area

California:
San Joaquin

Area of Application. Survey area.

Santa Barbara

Survey Area

California:
Santa Barbara

Area of Application. Survey area plus:

California:
San Luis Obispo

Solano

Survey Area

California:
Solano

Area of Application. Survey area plus:

California:
Alameda
Contra Costa
Marin
Napa
San Francisco
Sonoma

Ventura

Survey Area

California:
Ventura

Area of Application. Survey area.

* * * * *

[FR Doc. 2023–00108 Filed 1–6–23; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 3

[Docket Number—NIH–2020–0002]

RIN 0925–AA67

Conduct of Persons and Traffic on the National Institutes of Health Federal Enclave

AGENCY: National Institutes of Health, Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS or Department), through the National Institutes of Health (NIH), is amending the existing regulation for the conduct of persons and traffic on the NIH enclave in Bethesda, Maryland, to update certain provisions of the regulation.

DATES: This final rule is effective February 8, 2023.

FOR FURTHER INFORMATION CONTACT: Daniel Hernandez, NIH Regulations Officer, Office of Management Assessment, NIH, Rockledge 1, 6705 Rockledge Drive, Suite 601, Room 601–T, Bethesda, MD 20817, MSC 7901, by email at *dhernandez@mail.nih.gov,* or by telephone at 301–435–3343 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

On November 16, 2020, the Department of Health and Human Services (HHS or Department) issued a direct final rule (85 FR 72899) amending certain regulations, as part of its Regulatory Clean Up Initiative, to make miscellaneous corrections, including correcting references to other regulations, misspellings and other typographical errors. These corrections included changes to the regulation codified at 45 CFR part 3 concerning the conduct of persons and traffic on the National Institutes of Health Federal Enclave. With this final rule the Department makes several additional changes to 45 CFR part 3 that are necessary to further update the regulation. These additional changes were determined to be necessary following the review of the regulation conducted by NIH in 2019.

HHS announced its intention to take this rulemaking action in the notice of proposed rulemaking (NPRM) titled ''Conduct of Persons and Traffic on the National Institutes of Health Federal Enclave'' published in the **Federal Register** on February 28, 2022 (87 FR 11001). In the NPRM we provided a sixty-day comment period. The comment period ended on April 29, 2022.

In the NPRM, we proposed making several changes to the regulation at 45 CFR part 3 concerning the conduct of persons and traffic on the National Institutes of Health Federal Enclave that are necessary to ensure the regulation is up to date.

In subpart A of the regulation, we proposed amending § 3.4 by removing the last sentence that specifies the Police Office's main location and telephone number. The NIH Police Department may be relocated in the future under the current campus master plan. Removing the sentence eliminates the need in the future to amend the regulation any time the NIH Police Department is relocated.

In subpart C of the regulation, we proposed amending § 3.42 by revising the last sentence of paragraph (b) to update several terms. The existing last sentence states that the use of a dog by a handicapped person to assist that person is authorized. We proposed updating this sentence by replacing the term ''dog'' with the term ''service animal''. We also proposed to update this sentence by removing the term ''handicapped person'' and replacing it with the term ''a person with a disability'' to reflect current and accepted use of the term.

Additionally, in subpart C, we proposed amending § 3.42 by revising paragraph (f) to state that except as part of an approved medical research protocol a person may not smoke on the enclave. The existing language does not prohibit smoking outside of buildings on the enclave. As a tobacco-free campus, NIH does not allow smoking inside or outside buildings. The change makes this clear in the regulation.

In subpart D, we proposed amending § 3.61 by revising paragraph (a) to state that a person found guilty of violating any provision of the regulation in this part is subject to a fine or imprisonment of not more than thirty days or both, for each violation (Pub. L. 107–296, Homeland Security Act of 2002). The United States District Court for the District of Maryland determines the fine/fee schedule for violations of 45 CFR part 3. Traffic related violations on the NIH Federal enclave are covered by the Maryland District Court. Not stating a specific dollar amount for the fine in paragraph (a) eliminates any future need to amend the regulation when incremental increases in the fine amount occur. Information regarding 45 CFR part 3 violations can be found through the United States Attorney's Office for the District of Maryland or the United States Central Violations Bureau in San Antonio, Texas.

II. Summary of Public Comments

We did not receive any comments in response to the NPRM. Consequently, we did not make any changes to what we proposed in the previous NPRM. The final rule is the same as what we proposed in the previous NPRM.

We provide the following as public information.

Regulatory Impact Analysis

We examined the impacts of this final rule under Executive Order (E.O.) 12866, Regulatory Planning and Review; E.O. 13563, Improving Regulation and Regulatory Review; E.O. 13132, Federalism; the Regulatory Flexibility Act (5 U.S.C. 601–612); and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Orders 12866 and 13563

E.O. 12866, Regulatory Planning and Review, and E.O. 13563, Improving Regulation and Regulatory Review, direct Federal agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity) for all significant regulatory actions. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). Based on our analysis, we believe this final rule does not constitute a significant or economically significant regulatory action.

Executive Order 13132

Executive Order 13132, Federalism, requires Federal agencies to consult with State and local government officials in the development of regulatory policies and with federalism implications. We reviewed the final rule as required under the order and determined that it will not have a significant potential negative impact on States, in the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government and does not have any federalism implications. The Secretary asserts that this final rule will not have effect on the States or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Federal agencies to analyze regulatory options that would minimize any significant impact of the rule on small entities. For the purpose of this analysis, small entities include small business concerns as defined by the Small Business Administration (SBA), usually businesses with fewer than 500 employees. The Secretary asserts that the final rule will not create a significant economic impact on a substantial number of small entities, and therefore a regulatory flexibility analysis, is not required.

Unfunded Mandates Act of 1995

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires Federal agencies to prepare a written statement that includes an assessment of anticipated costs and benefits before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal organizations, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation with base year of 1995) in any one year.'' The current inflation-adjusted statutory threshold for 2022 is approximately $165 million based on the Gross Domestic Product deflator. This final rule will not result in a one-year expenditure that would meet or exceed that amount.

Paperwork Reduction Act

This final rule does not contain any information collection requirements that are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

List of Subjects in 45 CFR Part 3

Conduct, Federal buildings and facilities, Firearms, Government property, Traffic regulations.

For reasons presented in the preamble, 45 CFR part 3 is amended as set forth below.

PART 3—CONDUCT OF PERSONS AND TRAFFIC ON THE NATIONAL INSTITUTES OF HEALTH FEDERAL ENCLAVE

■ 1. The authority citation for part 3 continues to read as follows:

Authority: 40 U.S.C. 318–318d. 486; Delegation of Authority, 33 FR 604.

§ 3.4 [Amended]

■ 2. Section 3.4 is amended by removing the last sentence of the paragraph.

■ 3. Section 3.42 is amended by revising the last sentence in paragraph (b) and paragraph (f) to read as follows:

§ 3.42 Restricted activities.

* * * * *

(b) * * * The use of a service animal by a person with a disability to assist that person is authorized.

* * * * *

(f) *Smoking.* Except as part of an approved medical research protocol, a person may not smoke on the enclave.

* * * * *

■ 4. Section 3.61 is amended by revising paragraph (a) to read as follows:

§ 3.61 Penalties.

(a) A person found guilty of violating any provision of the regulations in this part is subject to a fine or imprisonment of not more than thirty days or both, for each violation (Pub. L. 107–296, Homeland Security Act of 2002).

* * * * *

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–00121 Filed 1–6–23; 8:45 am]

BILLING CODE 4140–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

[File No. R611004]

RIN 3084–AB15

Energy Labeling Rule; Correction

AGENCY: Federal Trade Commission.

ACTION: Final rule; correction and correcting amendment.

SUMMARY: The Federal Trade Commission (''Commission'') published a document in the **Federal Register** of October 12, 2022, concerning the Energy Labeling Rule. After publication, Commission staff learned that the document contained incorrect numbers in water heater tables, refrigerator tables, and regarding propane in certain appendices. Staff also learned that certain language in the Energy Labeling Rule regarding water heater size and type categories requires replacement to reflect accurate categories for water heaters under the Department of Energy conservation standards. The Commission is issuing this correction to reflect the corrected information.

DATES: Effective January 10, 2023.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome (202–326–2889), Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room CC–9528, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The final rule document submitted by Commission staff for publication contained errors related to certain range numbers; specifically, the ranges for medium capacity gas and electric water heaters in appendices D1, D2, and D4 (as well as conforming changes to Sample Label 5 in appendix L), the description for high-capacity models in appendices D1 through D5, and a

specific range number for refrigerators covered by appendix A6. The final rule also contained a typographical error; specifically, a decimal point was omitted from the price-per-gallon figure for propane in the table for revised appendix K1.

In addition, the Commission is correcting 16 CFR part 305 to replace language in § 305.17(a)(9) to reflect the accurate size and type categories for water heaters under the Department of Energy conservation standards (10 CFR part 430).

Federal Register Corrections

In final rule FR Doc. 2022–22036 appearing at 87 FR 61465 in the **Federal Register** of Wednesday, October 12, 2022, make the following corrections.

■ 1. On page 61470, in the table in appendix A6, the entry ''14.5 to 16.4'' is corrected to read as follows:

Appendix A6 to Part 305—Refrigerator Freezers With Automatic Defrost With Bottom-Mounted Freezer No Through The-Door Ice

RANGE INFORMATION

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy costs (dollars/year)	
	Low	High
* * *	*	*
14.5 to 16.4	$53	$84

RANGE INFORMATION—Continued

Manufacturer's rated total refrigerated volume in cubic feet	Range of estimated annual energy costs (dollars/year)	
	Low	High
* * *	*	*

■ 2. On pages 61473–61474, instruction 8 and the accompanying regulatory text is corrected to read as follows:

8. Revise appendices D1 through D5 to read as follows:

Appendix D1 to Part 305—Water Heaters—Gas

RANGE INFORMATION

Capacity (first hour rating in gallons)	Range of estimated annual energy costs (dollars/year)			
	Natural gas ($/year)		Propane ($/year)	
	Low	High	Low	High
''Very Small''—less than 18	(*)	(*)	(*)	(*)
''Low''—18 to 50.9	162	172	(*)	(*)
''Medium''—51 to 74.9	179	235	361	476
''High''—75 and over	227	336	460	679

(*) No data.

Appendix D2 to Part 305—Water Heaters—Electric

RANGE INFORMATION

Capacity	Range of estimated annual energy costs (dollars/year)	
First hour rating	Low	High
''Very Small''—less than 18	(*)	(*)
''Low''—18 to 50.9	90	357
''Medium''—51 to 74.9	121	494
''High''—75 and over	173	747

(*) No data.

Appendix D3 to Part 305—Water Heaters—Oil

RANGE INFORMATION

Capacity	Range of estimated annual energy costs (dollars/year)	
First hour rating	Low	High
''Very Small''—less than 18	(*)	(*)
''Low''—18 to 50.9	(*)	(*)
''Medium''—51 to 74.9	(*)	(*)
''High''—75 and over	625	686

(*) No data.

Appendix D4 to Part 305—Water Heaters—Instantaneous—Gas

RANGE INFORMATION

Capacity	Range of estimated annual energy costs (dollars/year)			
Capacity (maximum flow rate); gallons per minute (gpm)	Natural gas ($/year)		Propane ($/year)	
	Low	High	Low	High
"Very Small"—less than 1.6	24	30	50	61
"Low"—1.7 to 2.7	(*)	(*)	(*)	(*)
"Medium"—2.8 to 3.9	144	170	291	343
"High"—4.0 and over	210	253	427	511

(*) No data.

Appendix D5 to Part 305—Water Heaters—Instantaneous—Electric

RANGE INFORMATION

Capacity	Range of estimated annual energy costs (dollars/year)	
Capacity (maximum flow rate); gallons per minute (gpm)	Low	High
"Very Small"—less than 1.6	82	90
"Low"—1.7 to 2.7	(*)	(*)
"Medium"—2.8 to 3.9	(*)	(*)
"High"—4.0 and over	(*)	(*)

(*) No data.

■ 3. On page 61477, in the table in appendix K1, the entry "Propane" is corrected to read as follows:

Appendix K1 to Part 305—Representative Average Unit Energy Costs for Refrigerators, Refrigerator-Freezers, Freezers, Clothes Washers, Dishwashers, and Water Heater Labels

* * * * *

Type of energy	In commonly used terms	As required by DOE test procedure
* * *	* * *	*
Propane	$2.23/gallon [8]	$0.00002446/Btu.
* * *	* * *	*

* * * * *

[8] For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.

* * * * *

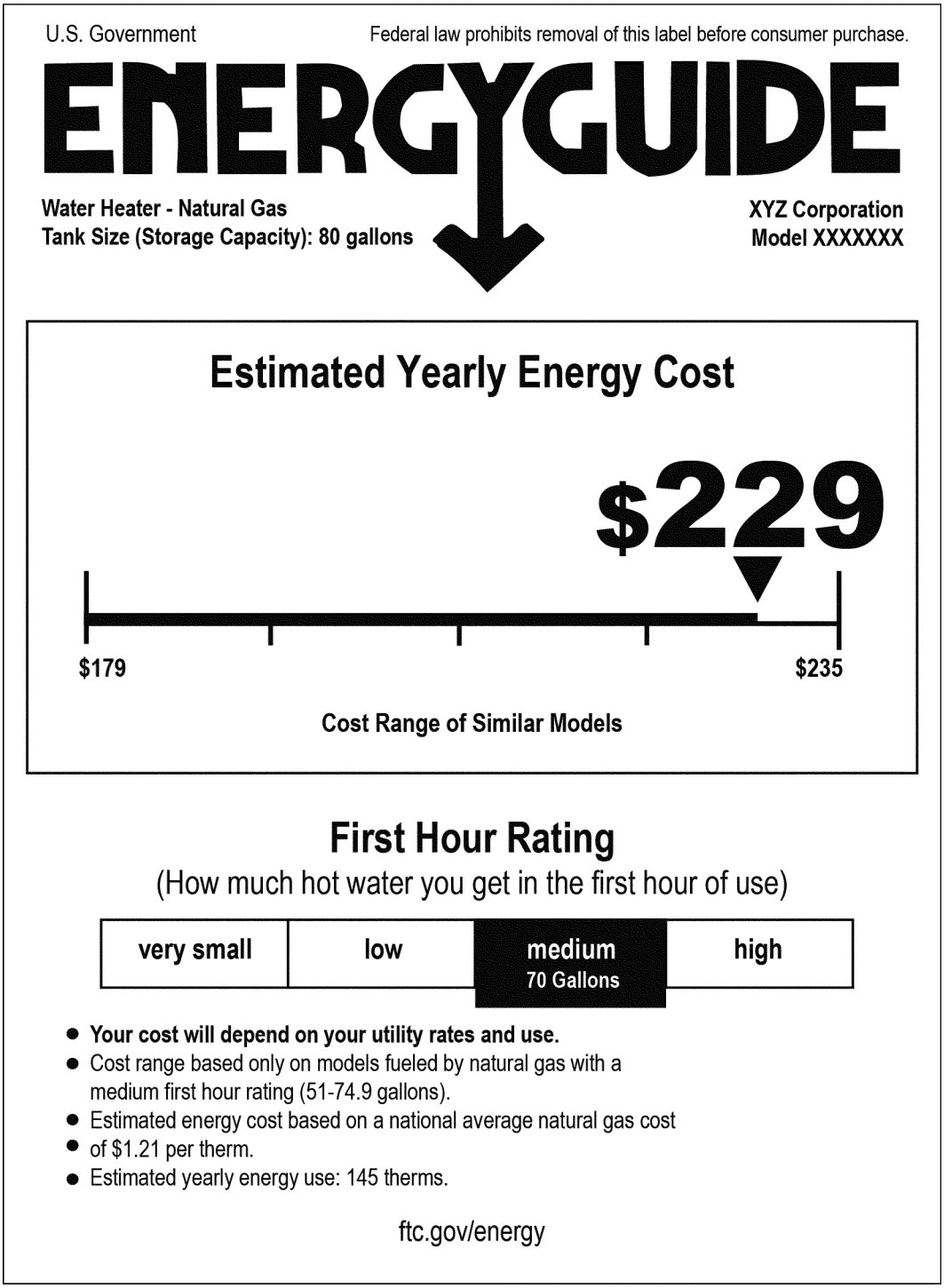
■ 4. On page 61483, in appendix L, Sample Label 5 is corrected to read as follows:

Appendix L to Part 305—Sample Labels

* * * * *

BILLING CODE 7550–01–P

Sample Label 5 – Water Heater



* * * * *

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Correcting Amendment

For the reasons discussed above, 16 CFR part 305 is corrected by making the following correcting amendment:

PART 305—ENERGY AND WATER USE LABELING FOR CONSUMER PRODUCTS UNDER THE ENERGY POLICY AND CONSERVATION ACT (''ENERGY LABELING RULE'')

■ 1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

§ 305.17 [Amended]

■ 2. In § 305.17:

■ a. In paragraph (a)(9)(i), remove the phrase ''or greater than 75 gallons'' and add in its place ''or 75 gallons or more''.

■ b. In paragraph (a)(9)(ii), remove the phrases ''[electric models or models fueled by natural gas]'' and ''2.8 to 4.0, or greater than 4.0'' and add in their places ''[electric models or models fueled by natural gas or models fueled by propane]'' and ''2.8 to 3.9, or 4.0 or more'', respectively.

Dated: December 15, 2022.

April J. Tabor,

Secretary.

[FR Doc. 2022–27680 Filed 1–6–23; 8:45 am]

BILLING CODE 7550–01–C

OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2634 and 2636

RIN 3209–AA66

2023 Civil Monetary Penalties Inflation Adjustments for Ethics in Government Act Violations

AGENCY: Office of Government Ethics.

ACTION: Final rule.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the U.S. Office of Government Ethics is issuing this final rule to make the 2023 annual adjustments to the Ethics in Government Act civil monetary penalties.

DATES: This final rule is effective January 15, 2023.

FOR FURTHER INFORMATION CONTACT: Margaret Dylus-Yukins, Assistant Counsel, General Counsel and Legal Policy Division, Office of Government Ethics, Telephone: 202–482–9300; TTY: 800–877–8339; FAX: 202–482–9237.

SUPPLEMENTARY INFORMATION:

I. Background

In November 2015, Congress passed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (the 2015 Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410). The 2015 Act required Federal agencies to make inflationary adjustments to the civil monetary penalties (CMPs) within their jurisdiction with an initial ''catch-up'' adjustment through an interim final rule effective no later than August 1, 2016, and further mandates that Federal agencies make subsequent annual inflationary adjustments of their CMPs, to be effective no later than January 15 of each year.

The Ethics in Government Act of 1978 as amended, Chapter 131, title 5 of the United States Code, provides for five CMPs.[1] Specifically, the Ethics Act provides for penalties that can be assessed by an appropriate United States district court, based upon a civil action brought by the Department of Justice, for the following five types of violations:

(1) knowing and willful failure to file, report required information on, or falsification of a public financial disclosure report, 5 U.S.C. 13106(a), 5 CFR 2634.701(b);

(2) knowing and willful breach of a qualified trust by trustees and interested parties, 5 U.S.C. 13104(f)(6)(C)(i), 5 CFR 2634.702(a);

(3) negligent breach of a qualified trust by trustees and interested parties, 5 U.S.C. 13104(f)(6)(C)(ii), 5 CFR 2634.702(b);

(4) misuse of a public report, 5 U.S.C. 13107(c)(2), 5 CFR 2634.703; and

(5) violation of outside employment/activities provisions, 5 U.S.C. 13145(a), 5 CFR 2636.104(a).

In compliance with the 2015 Act and guidance issued by the Office of Management and Budget (OMB), the U.S. Office of Government Ethics (OGE) made previous inflationary adjustments to the five Ethics Act CMPs, and is issuing this rulemaking to effectuate the 2023 annual inflationary adjustments to those CMPs. In accordance with the 2015 Act, these adjustments are based on the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October preceding the date of the adjustment, and the prior year's October CPI–U. Pursuant to OMB guidance, the cost-of-living adjustment multiplier for 2022, based on the CPI–U for October 2021, not seasonally adjusted, is 1.07745. To calculate the 2023 annual adjustment, agencies must multiply the most recent penalty by the 1.07745 multiplier, and round to the nearest dollar.

Applying the formula established by the 2015 Act and OMB guidance, OGE is amending the Ethics Act CMPs through this rulemaking to:

(1) Increase the three penalties reflected in 5 CFR 2634.702(a), 2634.703, and 2636.104(a)—which were previously adjusted to a maximum of $22,021—to a maximum of $23,727;

(2) Increase the penalty reflected in 5 CFR 2634.702(b)—which was previously adjusted to a maximum of $11,011—to a maximum of $11,864; and

(3) Increase the penalty reflected in 5 CFR 2634.701(b)—which was previously adjusted to a maximum of $66,190—to a maximum of $71,316.

These adjusted penalty amounts will apply to penalties assessed after January 15, 2023 (the effective date of this final rule) whose associated violations occurred after November 2, 2015.

OGE will continue to make future annual inflationary adjustments to the Ethics Act CMPs in accordance with the statutory formula set forth in the 2015 Act and OMB guidance.

II. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), as Director of the Office of Government Ethics, I find that good cause exists for waiving the general notice of proposed rulemaking and public comment procedures as to these technical amendments. The notice and comment procedures are being waived because these amendments, which concern matters of agency organization, procedure and practice, are being adopted in accordance with statutorily mandated inflation adjustment procedures of the 2015 Act, which specifies that agencies shall adjust civil monetary penalties notwithstanding Section 553 of the Administrative Procedure Act. It is also in the public interest that the adjusted rates for civil

[1] OGE has previously determined, after consultation with the Department of Justice, that the $200 late filing fee for public financial disclosure reports that are more than 30 days overdue (see section 104(d) of the Ethics Act, Chapter 131, title 5 of the United States Code, 104(d), and 5 CFR 2634.704 of OGE's regulations thereunder) is not a CMP as defined under the Federal Civil Penalties Inflation Adjustment Act, as amended. Therefore, that fee is not being adjusted in this rulemaking (nor was it adjusted by OGE in previous CMP rulemakings), and will remain at its current amount of $200.

monetary penalties under the Ethics in Government Act become effective as soon as possible in order to maintain their deterrent effect.

Regulatory Flexibility Act

As the Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final rule would not have a significant economic impact on a substantial number of small entities because it primarily affects current Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain information collection requirements that require approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 5, subchapter II), this rule would not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Executive Order 13563 and Executive Order 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select the regulatory approaches that maximize net benefits (including economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget has determined that rulemakings such as this implementing annual inflationary adjustments under the 2015 Act are not significant regulatory actions under Executive Order 12866.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects

5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, Trusts and trustees.

5 CFR Part 2636

Conflict of interests, Government employees, Penalties.

Dated: January 4, 2023.

Emory Rounds,

Director, U.S. Office of Government Ethics.

For the reasons set forth in the preamble, the U.S. Office of Government Ethics is amending 5 CFR parts 2634 and 2636 as follows:

PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

■ 1. The authority citation for part 2634 is revised to read as follows:

Authority: 5 U.S.C. ch. 131; 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by sec. 31001, Pub. L. 104–134, 110 Stat. 1321, and sec. 701, Pub. L. 114–74; Pub. L. 112–105, 126 Stat. 291; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 2. Section 2634.701 is amended by revising paragraph (b) to read as follows:

§ 2634.701 Failure to file or falsifying reports.

* * * * *

(b) *Civil action.* The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information required by filers of public reports under subpart B of this part. The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth in Table 1 to this section, as provided by section 104(a) of the Act, as amended, and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

TABLE 1 TO § 2634.701

Date of violation	Penalty
Violation occurring between Sept. 14, 2007 and Nov. 2, 2015	$50,000
Violation occurring after Nov. 2, 2015	71,316

* * * * *

■ 3. Section 2634.702 is revised to read as follows:

§ 2634.702 Breaches by trust fiduciaries and interested parties.

(a) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully violates the provisions of § 2634.408(d)(1) or (e)(1). The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth in Table 1 to this section, as provided by section 102(f)(6)(C)(i) of the Act and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

TABLE 1 TO § 2634.702

Date of violation	Penalty
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	$11,000
Violation occurring after Nov. 2, 2015	23,727

(b) The Attorney General may bring a civil action in any appropriate United States district court against any individual who negligently violates the provisions of § 2634.408(d)(1) or (e)(1). The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth in Table 2 to this section, as provided by section 102(f)(6)(C)(ii) of the Act and as adjusted in accordance with the inflation adjustment procedures of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

TABLE 2 TO § 2634.702

Date of violation	Penalty
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	$5,500
Violation occurring after Nov. 2, 2015	11,864

■ 4. Section 2634.703 is revised to read as follows:

§ 2634.703 Misuse of public reports.

(a) The Attorney General may bring a civil action against any person who obtains or uses a report filed under this part for any purpose prohibited by section 105(c)(1) of the Act, as incorporated in § 2634.603(f). The court in which the action is brought may assess against the person a civil monetary penalty in any amount, not to exceed the amounts set forth in Table 1 to this section, as provided by section 105(c)(2) of the Act and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

TABLE 1 TO § 2634.703

Date of violation	Penalty
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	$11,000
Violation occurring after Nov. 2, 2015	23,727

(b) This remedy shall be in addition to any other remedy available under statutory or common law.

PART 2636—LIMITATIONS ON OUTSIDE EARNED INCOME, EMPLOYMENT AND AFFILIATIONS FOR CERTAIN NONCAREER EMPLOYEES

■ 5. The authority citation for part 2636 is revised to read as follows:

Authority: 5 U.S.C. ch. 131; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by sec. 31001, Pub. L. 104–134, 110 Stat. 1321, and sec. 701, Pub. L. 114–74; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 6. Section 2636.104 is amended by revising paragraph (a) to read as follows:

§ 2636.104 Civil, disciplinary and other action.

(a) *Civil action.* Except when the employee engages in conduct in good faith reliance upon an advisory opinion issued under § 2636.103, an employee who engages in any conduct in violation of the prohibitions, limitations, and restrictions contained in this part may be subject to civil action under section 504(a) of the Ethics in Government Act, as amended, and a civil monetary penalty of not more than the amounts set in Table 1 to this section, as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, or the amount of the compensation the individual received for the prohibited conduct, whichever is greater.

TABLE 1 TO § 2636.104

Date of violation	Penalty
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	$11,000
Violation occurring after Nov. 2, 2015	23,727

* * * * *

[FR Doc. 2023–00167 Filed 1–6–23; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–1000]

RIN 1625–AA00

Safety Zones; Pensacola, Panama City, and Tallahassee, Florida

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: This temporary final rule would implement a special activities provision of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021. The Coast Guard is establishing three temporary safety zones for the safe splashdown and recovery of reentry vehicles launched by Space Exploration Technologies Corporation (SpaceX) in support of the National Aeronautics and Space Administration (NASA) from January 9, 2023 until January 30, 2023. These three temporary safety zones are located within the Captain of the Port Sector Mobile area of responsibility

offshore of Pensacola, Panama City, and Tallahassee, Florida. This rule would prohibit U.S. flagged vessels from entering any of the temporary safety zones unless authorized by the Captain of the Port Sector Mobile or a designated representative. Foreign-flagged vessels would be encouraged to remain outside the safety zones. This action is necessary to protect vessels and waterway users from the potential hazards created by reentry vehicle splashdowns and recovery operations in the U.S. Exclusive Economic Zone (EEZ). It is also necessary to provide for the safe recovery of reentry vehicles, and any personnel involved in reentry services, after the splashdown.

DATES: This rule is effective from January 9, 2023 through January 30, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–1000 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Andrew Anderson, Sector Mobile Chief of Waterways (spw), U.S. Coast Guard; telephone (251) 441–5768, email *Andrew.S.Anderson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
EEZ Exclusive Economic Zone
FR Federal Register
NASA National Aeronautics and Space Administration
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code
Space X Space Exploration Technologies Corporation

II. Background, Purpose, and Legal Basis

On January 1, 2021, the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283) (Authorization Act) was enacted. Section 8343 (134 Stat. 4710) calls for the Coast Guard to conduct a two-year pilot program to establish and implement a process to establish safety zones to address special activities in the U.S. Exclusive Economic Zone (EEZ).[1] These special activities include space activities[2] carried out by United States (U.S.) citizens. Terms used to describe space activities, including *launch, reentry site, and reentry vehicle,* are defined in 51 U.S.C. 50902, and in this document.

The Coast Guard has long monitored space activities impacting the maritime domain and taken actions to ensure the safety of vessels and the public as needed during space launch[3] operations. In conducting this activity, the Coast Guard engages with other government agencies, including the Federal Aviation Administration (FAA) and National Aeronautics and Space Administration (NASA), and private space operators, including Space Exploration Technologies Corporation (SpaceX). This engagement is necessary to ensure statutory and regulatory obligations are met to ensure the safety of launch operations and waterway users.

During this engagement, the Coast Guard was informed of space reentry vehicles and recovery operations in the U.S. EEZ. In accordance with 51 U.S.C. Section 50902, ''reentry vehicle'' is defined as a vehicle designed to return from Earth orbit or outer space to Earth, or a reusable launch vehicle designed to return from Earth orbit or outer space to Earth, substantially intact. SpaceX, a U.S. company, has identified three reentry sites[4] within the U.S. EEZ of the Captain of the Port Sector Mobile area of responsibility (AOR) expected to be used for the splashdown[5] and recovery of reentry vehicles. All of these sites are located in the Gulf of Mexico off the Coast of Florida (FL).

On May 4, 2022, we published a temporary final rule in the **Federal Register** (87 FR 26273) for two anticipated reentry vehicle recovery missions within the Coast Guard District Eight AOR offshore of Panama City, Pensacola, and Tallahassee, FL from April 17, 2022 through May 15, 2022. Based on the date the Coast Guard was informed of the reentry, and the immediate need to establish the safety zone, the Coast Guard did not have sufficient time to publish a notice of proposed rulemaking (NPRM) for that rule. The Coast Guard additionally published recovery mission temporary final rules for the periods from August 22, 2022 through September 30, 2022 (87 FR 51253) and October 12, 2022 through November 10, 2022 (87 FR 61508).

Elsewhere in this issue of the **Federal Register** we have published a notice of proposed rulemaking (NPRM) under docket COTP USCG–2022–0995, Safety Zones in Reentry Sites; Panama City, Pensacola, and Tallahassee, Florida, in which we will propose to establish these safety zones through the end of the pilot period in 2024.

The purpose of this rule is to ensure the protection of vessels and waterway users in the U.S. EEZ from the potential hazards created by reentry vehicle splashdowns and recovery operations, and the safe recovery of reentry vehicles and personnel involved in reentry services.[6] The Coast Guard is proposing this rule under authority of section 8343 of the Authorization Act.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because it is impracticable and contrary to the public interest. The National Aeronautics and Space Administration (NASA) Crew-4 capsule recovery mission was approved and scheduled less than 30 days before the need for the three safety zones to be in place starting on January 9, 2023. Publishing an NPRM would be impracticable and contrary to the public interest since the missions would begin before completion of the rulemaking process, thereby inhibiting the Coast Guard's ability to protect against the hazards associated with the recovery missions.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because the temporary safety zones must be established by January 9, 2023, to

[1] The Coast Guard defines the U.S. *exclusive economic zone* in 33 CFR 2.30(a). *Territorial sea* is defined in 33 CFR 2.22.

[2] *Space Activities* means space activities, including launch and reentry, as such terms are defined in section 50902 of Title 51, United States Code, carried out by United States citizens.

[3] The term *launch* is defined in 51 U.S.C. 50902.

[4] *Reentry site* means the location on Earth to which a reentry vehicle is intended to return (as defined in a license the FAA Administrator issues or transfers under this chapter).

[5] *Splashdown* refers to the landing of a reentry vehicle into a body of water.

[6] *Reentry Services* means (1) activities involved in the preparation of a reentry vehicle and payload, crew (including crew training), government astronaut, or space flight participant, if any, for reentry; and (2) the conduct of a reentry.

mitigate safety concerns during the capsule recovery missions.

III. Discussion of Proposed Rule

The Coast Guard is establishing three temporary safety zones in the U.S. EEZ for the safe reentry vehicle splashdown and recovery of reentry vehicles launched by SpaceX in support of NASA missions between January 9, 2023 and January 30, 2023.

The temporary safety zones are located within the Captain of the Port Sector Mobile AOR offshore of Panama City, Pensacola, and Tallahassee, FL in the Gulf of Mexico. The temporary final rule prohibits U.S.-flagged vessels from entering any of the safety zones unless authorized by the Captain of the Port Sector Mobile or a designated representative. Because the safety zones are within the U.S. EEZ, only U.S.-flagged vessels would be subject to enforcement. However, all foreign-flagged vessels are encouraged to remain outside the safety zones.

The three temporary safety zones are located off the coast of FL in the Gulf of Mexico in the following areas:

(1) *Pensacola site:* All waters from surface to bottom encompassed within the following coordinates connecting a line from Point 1, thence to Point 2, thence to Point 3, and thence to point 4, connecting back to Point 1:

Point 1	29°53′02″ N	−087°35′46″ W
Point 2	29°53′02″ N	−087°24′14″ W
Point 3	29°42′58″ N	−087°24′14″ W
Point 4	29°42′58″ N	−087°35′46″ W

(2) *Panama City site:* All waters from surface to bottom encompassed within the following coordinates connecting a line from Point 1, thence to Point 2, thence to Point 3, and thence to point 4, connecting back to Point 1:

Point 1	29°47′46″ N	−086°16′44″ W
Point 2	29°47′46″ N	−086°05′20″ W
Point 3	29°37′48″ N	−086°05′20″ W
Point 4	29°37′48″ N	−086°16′44″ W

(3) *Tallahassee site:* All waters from surface to bottom encompassed within the following coordinates connecting a line from Point 1, thence to Point 2, thence to Point 3, and thence to point 4, connecting back to Point 1:

Point 1	29°21′47″ N	−084°17′46″ W
Point 2	29°21′47″ N	−084°06′18″ W
Point 3	29°11′46″ N	−084°06′18″ W
Point 4	29°11′46″ N	−084°17′46″ W

The coordinates for the safety zones are based on the furthest north, east, south, and west points of the reentry vehicles splashdown and are determined from data and modeling by SpaceX and NASA. The coordinates take into account the trajectories of the reentry vehicles coming out of orbit, the potential risk to the public, and the proximity to medical facilities that meet NASA requirements. The specific coordinates for the three temporary safety zones are presented in the regulatory text at the end of this document.

To the extent feasible, the Captain of the Port Sector Mobile or a designated representative will inform the public of the activation of the three temporary safety zones by Broadcast Notice to Mariners (BNM) on VHF–FM channel 16 and/or Marine Safety Information Bulletin (MSIB) (as appropriate) at least two days before the reentry vehicle splashdown. These broadcasts will identify the approximate date(s) during which a reentry vehicle splashdown and recovery operations would occur.

To the extent possible, twenty-four hours before a reentry vehicle splashdown and recovery operations, the Captain of the Port Sector Mobile or designated representative will inform the public that only one of the three safety zones would remain activated (subject to enforcement) until announced by BNM on VHF–FM channel 16, and/or MSIB (as appropriate) that the safety zone is no longer subject to enforcement. The specific temporary safety zone to be enforced will be based on varying mission and environmental factors, including atmospheric conditions, sea state, weather, and orbital calculations.

The MSIB will include the geographic coordinates of the activated safety zone, a map identifying the location of the activated safety zone, and information related to potential hazards associated with a reentry vehicle splashdown and recovery operations associated with space activities, including marine environmental and public health hazards, such the release of hydrazine and other potential oil or hazardous substances.

When the safety zone is activated, the Captain of the Port Sector Mobile or a designated representative will be able to restrict U.S.-flagged vessel movement including but not limited to transiting, anchoring, or mooring within the safety zone to protect vessels from hazards associated with space activities. The activated safety zone will ensure the protection of vessels and waterway users from the potential hazards created by reentry vehicle splashdowns and recovery operations. This includes protection during the recovery of a reentry vehicle, and the protection of personnel involved in reentry services and space support vessels.[7]

After a reentry vehicle splashdown, the Captain of the Port Sector Mobile or a designated representative will grant general permission to come no closer than three nautical miles within the activated safety zone from any reentry vehicle or space support vessel engaged in the recovery operations. The recovery operations are expected to last approximately one hour. That should allow for sufficient time to let any potential toxic materials clear the reentry vehicle, recovery of the reentry vehicle by the space support vessel, and address any potential medical evacuations for any personnel involved in reentry services that were onboard the reentry vehicle.

Once a reentry vehicle and any personnel involved in reentry services are removed from the water and secured onboard a space support vessel, the Captain of the Port Sector Mobile or designated representative would issue a BNM on VHF–FM channel 16 announcing the activated safety zone is no longer subject to enforcement. A photograph of a reentry vehicle and space support vessel expected to use the reentry sites are available in the docket.

IV. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and scope of the safety zones. The safety zones are limited in size and location to only those areas where capsule re-entry is reasonably occurs. The safety zones are limited in scope, as vessel traffic will be able to safely transit around the safety zones which will impact a small

[7] *Space Support Vessel* means any vessel engaged in the support of space activities. These vessels are typically approximately 170 feet in length, have a forward wheelhouse, and are equipped with a helicopter pad and lifting crane.

part of the United States exclusive economic zone (EEZ) within the Gulf of Mexico.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The safety zone activation and thus restriction to the public is expected to be approximately two hours per capsule recovery, and we anticipate one splash down during the effective period of this rule. Vessels would be able to transit around the activated safety zone location during this recovery. We do not anticipate any significant economic impact resulting from activation of the safety zones.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishing of three temporary safety zones, one of which may be activated on one occasion for approximately two hours between October 12, 2022 and November 10, 2022 for a SpaceX and NASA mission. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; section 8343 of Pub. L. 116–283, 134 Stat. 3388, 4710; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T08–1000 to read as follows:

§ 165.T08–1000 Safety Zones; Pensacola, Panama City, and Tallahassee, Florida.

(a) *Location.* The coordinates used in this paragraph are based on the World Geodetic System (WGS) 1984. The following areas are safety zones:

(1) *Pensacola Site.* All waters from surface to bottom encompassed within the following coordinates connecting a line from Point 1, thence to Point 2, thence to Point 3, and thence to point 4, connecting back to Point 1:

Point 1	29°53′02″ N	−087°35′46″ W
Point 2	29°53′02″ N	−087°24′14″ W
Point 3	29°42′58″ N	−087°24′14″ W
Point 4	29°42′58″ N	−087°35′46″ W

(2) *Panama City Site.* All waters from surface to bottom encompassed within the following coordinates connecting a line from Point 1, thence to Point 2, thence to Point 3, and thence to point 4, connecting back to Point 1:

Point 1	29°47′46″ N	−086°16′44″ W
Point 2	29°47′46″ N	−086°05′20″ W
Point 3	29°37′48″ N	−086°05′20″ W
Point 4	29°37′48″ N	−086°16′44″ W

(3) *Tallahassee Site.* All waters from surface to bottom encompassed within the following coordinates connecting a

line from Point 1, thence to Point 2, thence to Point 3, and thence to point 4, connecting back to Point 1:

Point 1	29°21′47″ N	−084°17′46″ W
Point 2	29°21′47″ N	−084°06′18″ W
Point 3	29°11′46″ N	−084°06′18″ W
Point 4	29°11′46″ N	−084°17′46″ W

(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Captain of the Port Sector Mobile; Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating a Coast Guard vessel; Coast Guard Representatives in the Merrill Operations Center; and other officers designated by the Captain of the Port Sector Mobile or assisting the Captain of the Port Sector Mobile in the enforcement of the safety zones.

Reentry Services means activities involved in the preparation of a reentry vehicle and payload, crew (including crew training), government astronaut, or space flight participant, if any, for reentry; and the conduct of a reentry.

Reentry Vehicle means a vehicle designed to return from Earth orbit or outer space to Earth, or a reusable launch vehicle designed to return from Earth orbit or outer space to Earth, substantially intact.

Space Support Vessel means any vessel engaged in the support of space activities. These vessels are typically approximately 170 feet in length, have a forward wheelhouse, and are equipped with a helicopter pad and lifting crane.

Splashdown means the landing of a reentry vehicle into a body of water.

(c) *Regulations.* (1) Because the safety zones described in paragraph (a) of this section are within the U.S. Exclusive Economic Zone, only U.S. flagged vessels are subject to enforcement. All foreign-flagged vessels are encouraged to remain outside the safety zones.

(2) In accordance with the general regulations in 33 CFR part 165, subpart C, no U.S. flagged vessel may enter the safety zones described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Mobile or a designated representative, except as provided in paragraph (d)(3) of this section.

(d) *Enforcement periods.* (1) To the extent possible, at least two days before a reentry vehicle splashdown, the Captain of the Port Sector Mobile or designated representative will inform the public of the activation of the three safety zones described in paragraph (a) of this section by Broadcast Notice to Mariners on VHF–FM channel 16, and/or Marine Safety Information Bulletin (as appropriate) for at least two days before the splashdown.

(2) To the extent possible, twenty-four hours before a reentry vehicle splashdown, the Captain of the Port Sector Mobile or designated representative will inform the public that only one of the three safety zones described in paragraph (a) of this section will remain activated until announced by Broadcast Notice to Mariners on VHF–FM channel 16, and/or Marine Safety Information Bulletin (as appropriate) that the safety zone is no longer subject to enforcement.

(3) After a reentry vehicle splashdown, the Captain of the Port Sector Mobile or a designated representative will grant general permission to come no closer than three nautical miles of any reentry vehicle or space support vessel engaged in the recovery operations, within the activated safety zone described in paragraph (a) of this section.

(4) Once a reentry vehicle, and any personnel involved in reentry service, are removed from the water and secured onboard a space support vessel, the Captain of the Port Sector Mobile or designated representative will issue a Broadcast Notice to Mariners on VHF–FM channel 16 announcing the activated safety zone is no longer subject to enforcement.

(e) *Effective period.* This rule is subject to enforcement from January 9, 2023 until January 30, 2023.

Dated: December 30, 2022.

Ulysses S. Mullins, Captain,

Commander, Coast Guard Sector Mobile, Captain of the Port Mobile.

[FR Doc. 2023–00187 Filed 1–6–23; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0988]

RIN 1625–AA00

Safety Zone, Port Arthur Canal, Sabine, Pass, TX

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone for waters of Port Arthur Canal adjacent to Golden Pass Liquiefied Natural Gas (LNG) Facility in Sabine Pass, TX. This safety zone would be temporarily activated when high pressure testing of piping systems is occurring. This safety zone is necessary to protect persons and vessels from potential blast and fragmentation hazards associated with high pressure piping testing.

DATES: This temporary interim rule is effective from January 20, 2023, until December 31, 2024. Comments and related material must be received by the Coast Guard on or before April 10, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0988 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Scott Whalen, Marine Safety Unit Port Arthur, TX, U.S. Coast Guard; telephone 409–719–5086, email *scott.k.whalen@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port, Marine Safety Unit Port Arthur
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
§ Section
U.S.C. United States Code

II. Basis and Purpose, and Regulatory History

On December 8, 2022, the Coast Guard was provided information regarding high pressure testing of piping systems at Golden Pass LNG in Sabine Pass, TX, that will occur between January 2023 and December 2024. A minimum of 15 test events will occur over the course of 2 years. Engineers have calculated the size of the exclusion zones necessary to ensure the safety of personnel. These exclusion zones reach navigable waters of the U.S. The Coast Guard has determined that these exclusion zones are areas where a safety zone is appropriate to prevent persons and vessels from entering during potentially hazardous high pressure testing. The Coast Guard is issuing this temporary interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedures Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good

cause, finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this temporary interim rule because doing so would be impracticable. These safety zones must be in place by January 20, 2023, in order to protect persons and vessels from the potentional blast and fragmentation hazards associated with high pressure testing of piping systems at Golden Pass LNG. We lack sufficient time to provide a reasonable comment period and then to consider those comments before issuing the rule.

The Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary interim rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this temporary interim rule would be contrary to the public interest because we must ensure the protection of persons and vessels from the potential hazards associated with high pressure testing of piping systems at Golden Pass LNG.

We are soliciting comments on this rulemaking. If the Coast Guard determines that changes to the temporary interim rule are necessary, we will publish a temporary final rule or other appropriate document.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this temporary interim rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port (COTP) has determined that potential hazards from high pressure testing of LNG piping systems is a safety concern for persons and vessels in the area of the testing. This rule is needed to protect persons and vessels from the hazards present during high pressure test of these piping systems.

IV. Discussion of the Rule

This temporary interim rule establishes three temporary safety zones from January 20, 2023, through December 31, 2024. Due to the varying degrees of hazard introduced by different test locations and pressures, the safety zones will have three separate exclusion areas: (1) Port Arthur Canal in the vicinity of Golden Pass LNG, shoreline to shoreline, between a western boundary of 093°55′44″ N and an eastern boundary of 093°54′36″ W; (2) Port Arthur Canal in the vicinity of Golden Pass LNG between a western boundary of 093°55′44″ N and an eastern boundary of 093°54′36″ W and extending from the south/west shoreline to the near channel limits as charted; and (3) Golden Pass LNG ship mooring basin within the following boundaries: starting on the shoreline west of the mooring basin at position 29°45′57.9″ N 093°55′39.6″ W, thence northeast to 29°45′59.25″ N 093°55′37.5″ W, thence to position W, thence o the shoreline on the east side of the basin at position 29°45′50.7″ N 093°55′17.0″ W. Based on the test being performed, the least restrictive exclusion zone will be enforced.

The duration of safety zone enforcement will be limited to the duration of the test, generally 2 hours or less. During enforcement, no vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

The Coast Guard will inform the public of the activation and subsequent deactivation of the temporary safety zone through Broadcast Notice to Mariners and Vessel Traffic Service (VTS) Advisory.

V. Regulatory Analyses

We developed this temporary interim rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This temporary interim rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this temporary interim rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration and entities impacted by the safety zone. This temporary interim safety zone affects approximately 750-yards of Port Arthur Canal in the vicinity of Golden Pass LNG. Most tests will permit vessel movements within the adjacent navigable channel. One or two tests may restrict vessel traffic for a period of not more than 2 hours. Mariners will be advised of the time of testing in advance via Broadcast Notice to Mariners and VTS Advisories.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to enter or transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct

effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone of short duration intended to protect persons and vessels from potential hazards associated with high pressure testing of piping system at the Golden Pass LNG facility in Sabine Pass, TX. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2022–0988 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T08–0988 to read as follows:

§ 165.T08–0988 Safety Zone; Port Arthur Canal, Sabine, Pass, TX.

(a) *Location.* (1) The following areas are safety zones:

(i) Port Arthur Canal in the vicinity of Golden Pass Liquiefied Natural Gas (LNG), shoreline to shoreline, between a western boundary of 093°55′44″ N and an eastern boundary of 093°54′36″ W;

(ii) Port Arthur Canal in the vicinity of Golden Pass LNG between a western boundary of 093°55′44″ N and an eastern boundary of 093°54′36″ W and extending from the south/west shoreline to the near channel limits as charted; and

(iii) Golden Pass LNG ship mooring basin within the following boundaries: starting on the shoreline west of the mooring basin at position 29°45′57.9″ N 093°55′39.6″ W, thence northeast to 29°45′59.25″ N 093°55′37.5″ W, thence to position W, thence to the shoreline on the east side of the basin at position 29°45′50.7″ N 093°55′17.0″ W. All coordinates based on North American Datum of 1983 (NAD83).

(2) Based on the test being performed, the least restrictive exclusion zone will be enforced.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol officer, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port, Port Arthur, TX (COTP), in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact Vessel Traffic Service (VTS) Port

Arthur on VHF channel 01A, or the COTP's on scene representative on VHF channel 13 or 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement periods.* The safety zone in paragraph (a) of this section is in effect from January 20, 2023, through December 31, 2024. This section will be subject to enforcement when high pressure tests are being conducted. Mariners will be informed of enforcement zone and enforcement periods by Broadcast Notice to Mariners, VTS Advisory, and the presence of enforcement vessels displaying flashing blue law enforcement lights.

Dated: January 3, 2023.

Molly A. Wike,

Captain, U.S. Coast Guard, Captain of the Port, Marine Safety Unit Port Arthur.

[FR Doc. 2023–00102 Filed 1–6–23; 8:45 am]

BILLING CODE 9110–04–P

Proposed Rules

Federal Register
Vol. 88, No. 5
Monday, January 9, 2023

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR 3560

[Docket No. RHS–22–MFH–0005]

RIN 0575–AD23

Changes Related to Reserve Account Administration in Multi-Family Housing (MFH) Direct Loan Programs

AGENCY: Rural Housing Service, U.S. Department of Agriculture (USDA).

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (RHS or Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), proposes to amend its regulation to implement changes related to the administration of property reserve accounts under the Multi-Family Housing (MFH) section 515, Rural Rental Housing, and section 514 Farm Labor Housing programs. The intent of this proposed rule is to increase flexibility in project refinancing for additional capital improvements needed at MFH section 515, Rural Rental Housing, and section 514 Farm Labor Housing properties.

DATES: Comments on the proposed rule must be received on or before March 10, 2023.

ADDRESSES: Comments may be submitted electronically by the Federal eRulemaking Portal: Go to *https://www.regulations.gov* and, in the ''Search Field'' box, labeled ''Search for Rules, Proposed Rules, Notices, or Supporting Documents,'' enter the following docket number: (RHS–22–MFH–0005) or the RIN# 0575–AD23. To submit or view public comments, click the ''Search'' button, select the ''Documents'' tab, then select the following document title: (Changes Related to Reserve Account Administration in Multi-Family Housing (MFH) Direct Loan Programs) from the ''Search Results,'' and select the ''Comment'' button. Before inputting your comments, you may also review the ''Commenter's Checklist'' (optional). Insert your comments under the ''Comment'' title, click ''Browse'' to attach files (if available). Input your email address and select ''Submit Comment.'' Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link.

Other Information: Additional information about Rural Development (RD) and its programs is available on the internet at *https://www.rd.usda.gov/.*

All comments will be available online for public inspection at the Federal eRulemaking Portal (*https://www.regulations.gov*).

FOR FURTHER INFORMATION CONTACT: Jennifer Larson, Multi-Family Housing Portfolio Management Division, Rural Housing Service, 1400 Independence Avenue SW, Washington DC 20250–0782, Telephone: (202) 720–1615; Email: *jennifer.larson@usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The RHS, an agency of the USDA, offers a variety of programs to build or improve housing and essential community facilities in rural areas. RHS offers loans, grants, and loan guarantees for single- and multi-family housing, childcare centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, and housing for farm laborers. RHS also provides technical assistance loans and grants in partnership with non-profit organizations, Indian tribes, state and Federal government agencies, and local communities.

Title V of the Housing Act of 1949 (Act) authorized the USDA to make housing loans to farmers to enable them to provide habitable dwellings for themselves or their tenants, lessees, sharecroppers, and laborers. The USDA then expanded opportunities in rural areas, making housing loans and grants to rural residents through the Single-Family Housing (SFH) and Multi-Family Housing (MFH) Programs.

The RHS operates the MFH section 515 Rural Rental Housing direct loan program. The Section 515 program employs a public-private partnership by providing subsidized loans at an interest rate of one percent to developers to construct or renovate affordable rental complexes in rural areas. This one percent loan keeps the debt service on the property sufficiently low to support below-market rents affordable to low-income tenants. Many of these projects also utilize low-income housing tax credit proceeds.

The RHS also operates the MFH Farm Labor Housing direct loan and grant programs under sections 514 and 516 which provide low interest loans and grants to provide housing for farmworkers. These eligible farmworkers may work either at the borrower's farm (''on-farm'') or at any other farm (''off-farm'').

II. Purpose of This Regulatory Action

On March 1, 2022, RHS published a final rule in the **Federal Register** (87 FR 11275) requiring MFH direct loan housing projects to maintain a reserve account, subject to the requirements of 7 CFR part 1902, subpart A, regarding supervised bank accounts. The final rule also stipulated that a MFH housing project's reserve account may alternatively be escrowed by the Agency when the Agency deems necessary. In addition, the March 1, 2022, rule allowed for an annual U.S. Department of Housing and Urban Development Operating Cost Adjustment Factor (OCAF) increase in contributions to a MFH project reserve account. The borrower may choose the option for annual incremental OCAF increases in a project's reserve account contributions, which may improve property preparedness to address capital needs over the life of the project.

Amendments proposed in this rule are designed to increase flexibility in project refinancing for additional capital improvements needed for a section 515 or 514 MFH property. The MFH direct loan project's general operating account is deemed to contain surplus funds when the balance at the end of the housing project's fiscal year, after all payables, exceeds 20 percent of the operating and maintenance expenses. When a MFH property's Agency-approved budget results in surplus cash at the end of the year, this proposed change to the current regulation will allow the borrower to use surplus cash to fund Agency-approved soft debt. MFH-approved soft debt, such as ''cash flow notes,'' are often provided by state

or local government as vital, additional sources of MFH direct loan property rehabilitation funding. The changes will allow owners the flexibility to access surplus cash notes as a new source of capital for property improvements, and to implement operating cost increases in property reserve contributions.

III. Summary of Changes

The proposed changes would amend 7 CFR 3560.306 to include reducing debt service on other third-party debt, as an allowable use of funds, including payments toward cash flow notes. Allowing borrowers to use surplus funds to repay third-party debt would allow those borrowers to access state and local government funding available as a capital source for property improvements. Acceptable third-party debt, including cash flow notes, will take the form of a written agreement for the payment of an Agency-approved debt obligation, with or without interest. Payments may occur only after approval has been granted by the Agency. These changes are designed to improve property condition and increase tools available to borrowers to preserve properties as affordable housing resources. This proposed rule no longer includes the reduction in rents as an allowable use of surplus funds, as rent-setting is part of the annual proposed budget process and should not be included in the reserve account section of this regulation. These changes are designed to improve property condition and increase tools available to borrowers to preserve properties as affordable housing resources.

IV. Regulatory Information

Statutory Authority

The Rural Rental Housing program is authorized under sections 514, 515, 516 of title V of the Housing Act of 1949, as amended; 42 U.S.C. 1480 *et seq.;* and implemented under 7 CFR part 3560.

Executive Order 12372, Intergovernmental Review of Federal Programs

These loans are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. RHS conducts intergovernmental consultations for each loan in accordance with 2 CFR part 415, subpart C.

Executive Order 12866, Regulatory Planning and Review

This proposed rule has been determined to be non-significant and, therefore, was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988. In accordance with this rulemaking: (1) Unless otherwise specifically provided, all state and local laws that conflict with this rulemaking will be preempted; (2) no retroactive effect will be given to this rulemaking except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before suing in court that challenges action taken under this rulemaking.

Executive Order 13132, Federalism

The policies contained in this proposed rule do not have any substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule does not impose substantial direct compliance costs on state and local governments; therefore, consultation with States is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on RHS in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the proposed rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this proposed rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RHS on this rulemaking, they are encouraged to contact USDA's Office of Tribal Relations or RD's Tribal Coordinator at: *AIAN@usda.gov* to request such a consultation.

National Environmental Policy Act

This document has been reviewed in accordance with 7 CFR part 1970, subpart A, ''Environmental Policies.'' RHS determined that this action does not constitute a major Federal action significantly affecting the quality of the environment. In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement (EIS) is not required.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature on this document that this proposed rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Unfunded Mandate Reform Act (UMRA)

Title II of the UMRA, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private sector. Under section 202 of the UMRA, Federal agencies generally must prepare a written statement, including cost-benefit analysis, for proposed and Final Rules with ''Federal mandates'' that may result in expenditures to state, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires a Federal agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for state, local, and tribal governments or for the private sector. Therefore, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575–0189. This proposed rule contains no new reporting and recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

E-Government Act Compliance

RHS is committed to complying with the E-Government Act by promoting the use of the internet and other information technologies to provide

increased opportunities for citizen access to government information, services, and other purposes.

Civil Rights Impact Analysis

Rural Development has reviewed this proposed rule in accordance with USDA Regulation 4300–4, Civil Rights Impact Analysis, to identify any major civil rights impacts the proposed rule might have on program participants on the basis of age, race, color, national origin, sex, or disability. After review and analysis of the proposed rule and available data, it has been determined that implementation of the rulemaking will not adversely or disproportionately impact very low, low- and moderate-income populations, minority populations, women, Indian tribes, or persons with disability by virtue of their race, color, national origin, sex, age, disability, or marital or familial status. No major civil rights impact is likely to result from this proposed rule.

Assistance Listing

The program affected by this regulation is listed in the Assistance Listing Catalog (formerly Catalog of Federal Domestic Assistance) under number 10.415-Rural Rental Housing Loans.

Non-Discrimination Statement Policy

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.ocio.usda.gov/document/ad-3027,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

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List of Subjects in 7 CFR 3560

Accounting, Administrative practice and procedure, Aged, Conflicts of interest, Government property management, Grant programs-housing and community development, Insurance, Loan programs-agriculture, Loan programs-housing and community development, Low and moderate-income housing, Migrant labor, Mortgages, Nonprofit organizations, Public housing, Rent-subsidies, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, Rural Housing Service proposes to amend 7 CFR part 3560 as follows:

PART 3560—DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS

■ 1. The authority citation for part 3560 continues to read as follows:

Authority: 42 U.S.C. 1480.

Subpart G—Financial Management

■ 2. Amend § 3560.306 by revising paragraph (d)(2) to read as follows:

§ 3560.306 Reserve account.

* * * * *

(d) * * *

(2) If a housing project's general operating account has surplus funds at the end of the housing project's fiscal year per paragraph (d)(1) of this section, the borrower will be required to use such surplus for one of the following (not in priority order): use the surplus funds to address capital needs, make a deposit in the reserve account or reduce the debt service on the borrower's loans, including Agency-approved third-party debt. The prior written consent of the Agency must be obtained before surplus funds may be used to pay debt service on third-party debt. At the end of the borrower's fiscal year, if the borrower is required to transfer surplus funds from the general operating account to the reserve account, the transfer does not change the future required contributions to the reserve account.

* * * * *

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2023–00140 Filed 1–6–23; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1, 2, and 3

[Docket No. APHIS–2022–0022]

RIN 0579–AE69

Wild and Exotic Animal Handling, Training of Personnel Involved With Public Handling of Wild and Exotic Animals, and Environmental Enrichment for Species

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: We are soliciting public comment on our plan to strengthen regulations regarding the handling of wild and exotic animals for exhibition, as well as the training of personnel involved in the handling of wild and exotic animals, and to establish standards addressing environmental enrichment for all regulated animals. The changes we are considering would help ensure the humane handling and treatment of exhibited animals, as well as the health and well-being of all animals covered under the Animal Welfare Act.

DATES: We will consider all comments that we receive on or before March 10, 2023.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2022–0022 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2022–0022, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.10, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *www.regulations.gov* or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence

Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Lance H. Bassage, VMD, Director, National Policy Staff, Animal Care, APHIS, 4700 River Road, Unit 84, Riverdale, MD 20737; *lance.h.bassage@usda.gov;* (970) 494–7478.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (AWA, 7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, and carriers and intermediate handlers. The Secretary has delegated responsibility for administering the AWA to the Administrator of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS). Within APHIS, the responsibility for administering the AWA has been delegated to the Deputy Administrator for Animal Care. Regulations and standards established under the AWA are contained in 9 CFR parts 1, 2, and 3 (referred to below as the regulations). Part 1 contains definitions for terms used in parts 2 and 3; and part 2 provides administrative requirements and sets forth institutional responsibilities for regulated parties. Within part 2, subpart I contains, among other things, requirements for the handling of wild or exotic animals. Part 3 contains specifications for the humane handling, care, treatment, and transportation of animals covered by the AWA.

Currently, there are 1,970 active class C (exhibitor) licenses; since 2019, roughly 70 to 145 new licenses have been approved each year. Under the current regulations, licensees who maintain wild or exotic animals must demonstrate adequate experience and knowledge of the species they maintain (9 CFR 2.131(a)). The regulations also require that all animals be handled as expeditiously and carefully as possible in a manner that does not cause trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort, and prohibits physical abuse (9 CFR 2.131(b)), and during public exhibition, be handled so there is minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animal and the general viewing public so as to assure the safety of animals and the public (9 CFR 2.131(c)(1)). APHIS ensures licensees meet these criteria and are compliant with the regulations during on-site inspections of the facilities prior to licensure and at various intervals throughout the 3-year license period (regularly scheduled routine inspections and focused inspections following up on non-compliances or in response to complaints). We believe that providing greater regulatory clarity regarding the requirements to demonstrate ''adequate experience and knowledge'' of the species being maintained and to maintain ''sufficient distance and/or barriers between the animal and the general viewing public'' would benefit licensees, Animal Care inspectors, and the public, and would aid in the enforcement of the AWA.

Insufficient experience and knowledge of personnel and inadequate safeguards in activities involving exhibited animals can endanger both the animals and the public, particularly in activities involving public contact with wild or exotic animals. In 2021, 44.4 percent (969/2182) of APHIS' licensed exhibitors offered interactions between the public and animals as part of their business, representing a 1.8-fold increase from 2019 (25 percent; 505/2024). Between 2019 and 2021, 119 ''handling'' non-compliances were reported in eFile on APHIS inspection reports, 12.6 percent of which led to human or animal injury, or animal death. Species used in such interactions include large carnivores, megavertebrates, and nonhuman primates. Most interactions involved full contact (32 percent) or protected contact (43.7 percent) interactions between animals and the public. The risks to public safety inherent in these activities place the animals involved at an increased risk for harm. In situations in which an animal may pose a risk to public safety (for example, a child entering an animal's enclosure), the animal may be euthanized or otherwise harmed in an attempt to protect the public.

Another area that may warrant amendment of the current regulations is environmental enrichment for regulated animals. The current regulations regarding environmental enrichment are limited to addressing the needs of non-human primates and marine mammals. These requirements include developing, documenting, and following a plan addressing the non-human primates' social needs (9 CFR 3.81(a)), and a physical environment allowing the non-human primates to express species-typical activities (9 CFR 3.81(b)).

It is well-understood that environmental enrichment for animals under a licensee's care is vital to their psychological health and welfare. The most common concern regarding enrichment noted by APHIS inspectors of licensees exhibiting species other than non-human primates has been a complete lack of any enrichment or a barren environment, followed by single housing of social species, and an inability to express species-typical behaviors.

In light of the concerns regarding interactions between wild or exotic animals and the public, the lack of specificity regarding the requirement to demonstrate ''adequate experience and knowledge'' in the species being maintained, and the lack of requirements for environmental enrichment of all regulated animals, APHIS is contemplating amendments to the regulations.

Definitions of Category 1, 2, and 3 Animals

To ensure that any regulations we promulgate regarding the public handling of exhibited animals account for the varying levels of risk involved with different species, we are contemplating categorizing animals into three categories.

Category 1 animals would refer to exotic or wild animals with the capability or potential to cause severe injury, dismemberment, or death to the public or staff. Animals in this category would include cheetahs, panthers, bobcats, lynxes, bears, wolves, coyotes, large primates (macaques, baboons, nonbrachiating species larger than 33 pounds, great apes), killer whales, walruses, zebras and zebra hybrids, large bovids (for example, bushbucks, kudus, nyalas, elands, bongos, sitatungas, bisons, buffalos, anoas, saolas, guars, bantengs, non-domesticated yaks, roans, sables, bluebucks, oryxes, addaxes, waterbucks, kobs, lechwes, and reedbucks), elephants, rhinoceroses, exotic canids (not otherwise listed), hippopotamuses, hyenas, clouded leopards, wolverines, onagers, Przewalski's horses, and wild asses.

Category 2 animals would include exotic or wild animals with the capability or potential to cause injury to the public or staff that is serious but not likely to be severe or life-threatening. Animals in this category would include small primates (callitrichids, capuchins, squirrel monkeys, lemurs, spider monkeys, gibbons, small African primate species), sloths, coatis, river

otters, raccoons, camels, dolphins, pinnipeds, giraffes, kangaroos, other wild or exotic mammals (not otherwise listed in any category), wallabies, skunks/polecats, foxes, other primates (not otherwise listed in any category), wolf hybrids, medium bovids (for example, gazelles, springboks, blackbucks, gerenuks, duikers, impalas, tsessebes, topis, bonteboks, blesboks, hartebeests, wildebeests), servals, caracals, sand cats, ocelots, feline hybrid crosses, other exotic felines (not otherwise listed in any category), nondomestic pigs, okapis, beluga whales, wallaroos, meerkats, other marine mammals, civets, minks, giant anteaters, aardvarks, martins, mongooses, koalas, tapirs, peccaries, jaguarundis, javelinas, pigmy hippos, and other exotic canids (foxes, singing dogs, jackals, bush dogs).

Category 3 animals would include common farm animals and ''pocket pets'' (small exotic and domestic mammals) that are unlikely to cause serious injury to the public or staff. Animals in this category would include farm animals as defined by the AWA regulations in 9 CFR 1.1 (such as domestic bovines, sheep, goats, llamas, horses, domestic pigs, and rabbits, among others), guinea pigs, other cavy species, hedgehogs, other rodents, small and large cervids, opossums, porcupines, ferrets, kinkajous, armadillos, capybaras, sugar gliders, tenrecs, tamanduas, degus, agoutis, and guanacos.

We are seeking comment on whether classifying the animals is a useful regulatory framework and whether we have classified the above animals into the appropriate risk categories. Particularly, we are interested in receiving comments on whether any animals should be added or removed from the lists of animals that we have tentatively classified as Category 1, 2, or 3, and, if the animal should be removed from its current classification, which category it should be placed in.

Types of Public Contact Activities With Exhibited Animals

With the aforementioned categories in mind, we are considering specifying regulatory requirements regarding public contact with animals that are commensurate with the risk posed by such animals. We are considering formulating such regulations for four types of public contact activities:

- *Full contact activities:* The public is in a shared space with animals with no barriers between the public and the animals, and direct physical contact is permitted or encouraged. Examples may include hand-feeding animals, photo opportunities, other hands-on encounters with animals, or rides on animals, all of which take place without any barriers in place between the public and the animal(s).
- *Protected contact activities:* A partial barrier separates the public and the animals, an attendant is present, and direct physical contact is permitted. Examples may include certain feeding activities, certain photo opportunities, certain drive-through exhibits (where guests are able to hand-feed or touch animals), or exhibits with PVC treat tubes.
- *Walk-/Drive-Through Exhibits:* The public is in shared space with animals, but direct physical contact is not permitted. Examples may include aviary-type exhibits, kangaroo walk-abouts, or drive-through parks where guests are in ''closed'' vehicles and are unable to feed or touch the animals.
- *Performances:* Performing animal shows in which there may be a partial barrier or no barrier between the public and animals, and direct physical contact is not permitted.

We are seeking comment on whether the above categories are appropriate, and if the distinctions between these four types of public contact activities are sufficiently clear, or whether they need further clarification.

Public Contact Activities With Exhibited Animals

For all public contact activities outlined above (full contact activities, protected contact activities, walk-/drive-through exhibits, and performances) involving regulated animals, we are considering developing general requirements that would promote animal welfare by minimizing risk to the animals, facility staff, and the public and that are commensurate with the risk posed by such animals.

Regulations could include, for example, activity-specific restrictions that would minimize risk; training requirements for the licensee and its employees; restrictions on participants (for example, age or number of people participating); and requirements for the animal involved (considering, for example, the risk to the public posed by the animal, including the animal's age, stage of development, or vaccination status).

We are considering requiring licensees to develop and implement a written plan specifying the measures that they will take to ensure compliance with the regulatory requirements for all public contact activities. The written plan would need to be signed and approved by an attending veterinarian and be available, upon request, for review by APHIS officials. A failure to follow the written plan would constitute a non-compliance with the AWA regulations and may result in enforcement proceedings.

We are seeking comment on our approach to regulating public contact activities with exhibited animals. Particularly, we are interested in receiving comments on the following questions:

- What general requirements should apply to all public contact activities, regardless of category (or species) of animal involved?
- What requirements or restrictions should apply to each of the four types of public contact activities involving Category 1 animals?
- What requirements or restrictions should apply to each of the four types of public contact activities involving Category 2 animals?
- What requirements or restrictions should apply to each of the four types of public contact activities involving Category 3 animals?
- Are there any requirements or restrictions that should apply only to a particular species involved in any one of the four types of public contact activities?
- Should any specific type of public contact activity involving any specific category of animal (or species) be prohibited?
- Should we require that an exhibitor file a written report within a specified period of time in the event of an animal escape, animal injury, or injury to the licensee or a member of the licensee's staff or the public? Should this requirement be limited to escapes or injuries involving specific categories (or species) of animals?
- If we choose to require a written plan specifying the measures that the licensee will take to ensure compliance with the regulatory requirements for all public contact activities, what specific requirements should the attending veterinarian consider when reviewing and/or approving public contact activities for each category (or species) of animal?
- What direct costs may be associated with developing a written plan for compliance for all public contact activities, including the cost and time it may take to develop a plan?
- Are there any reasonably foreseeable indirect costs (*e.g.,* opportunity costs or overhead) that stem from the direct costs of developing a plan?

Training of Individuals Handling Wild or Exotic Animals

We are also contemplating adding regulations regarding the training of licensees and staff of exhibitors who handle Category 1 and 2 animals at any time (including, but not limited to, handling during public contact activities). We welcome comments regarding training requirements that licensed exhibitors should be required to meet. We are particularly interested in comments regarding the nature of training that currently exists in the absence of APHIS requirements, including, but not limited to, the required duration and content of training, any particular training requirements for exhibitors who handle particular categories or species of animals, any differences in training requirements based on the extent or nature of the employee or volunteer's interaction with the animal, and any challenges that may exist in obtaining the necessary training. We are also seeking public comment on the costs that could be associated with training, if we were to require it, including the length of time that would be required to complete the training.

Environmental Enrichment for Animals

As noted earlier, the regulations currently only contain requirements for the environmental enrichment of non-human primates and marine mammals. We are contemplating adding regulatory requirements to address species-specific environmental enrichment for all regulated animals. Enrichments may address the psychological needs of species known to exist in social groups; species-specific feeding, foraging, and food acquisition behaviors; and enclosure space, lighting, and design that allow for species-typical behaviors.

Environmental enrichment requirements could be implemented as performance standards, and licensees and registrants would be able to use their own expertise to determine the specific measures that they would implement to meet the proposed requirements. If this approach were adopted, we would require licensees and registrants to develop and implement a written plan specifying the measures that they would take to provide for the environmental enrichment of the animals in their care that would be signed and approved by an attending veterinarian and made available to APHIS officials upon request. We anticipate that the licensee/registrant would be required to monitor the plan on an ongoing basis in order to ensure compliance with the plan and to make adjustments if warranted.

We are seeking comment on this approach to regulating environmental enrichment for regulated animals. Particularly, we are interested in receiving comments on the following questions:

- What, if any, general environmental enrichments should be required for all species?
- What environmental enrichments addressing psychological needs should be required for social species (in general or for particular species)?
- What environmental enrichments addressing natural feeding, foraging, and food acquisition behaviors should be required for animals in general, for certain taxa of animals, or for particular species?
- What environmental enrichments addressing enclosure space, lighting, and design to allow for species-typical behaviors should be required for animals in general, for certain taxa of animals, or for particular species?
- Are there other components or types of environmental enrichments we should consider when developing environmental enrichment requirements for certain taxa of animals or for particular species?
- If we choose to require a written plan, what specific requirements should the attending veterinarian consider when reviewing and/or approving the written plan?
- If environmental enrichment requirements were presented as performance standards, what guidance could APHIS provide to assist licensees and registrants to meet the performance standards?
- What direct costs may be associated with providing environment enrichment for the potentially affected animals in each category?
- Are there any reasonably foreseeable indirect costs (*e.g.,* opportunity costs or overhead) that stem from these direct costs?

Environmental Impacts

APHIS seeks public comment on whether the changes being considered may require the preparation of an environmental assessment or environmental impact statement pursuant to the National Environmental Policy Act (NEPA). Comments will help inform APHIS as to the applicability of NEPA to modifications to the regulations regarding the handling of wild or exotic animals and environmental enrichment for animals.

Economic Considerations

APHIS seeks public comment on economic cost considerations for businesses, and in particular small businesses, associated with the amendments being considered. Specifically, we invite public comments on the number of entities that would be potentially impacted by the amendments to the regulations should we proceed to a proposed rule, and the costs associated with these amendments, and detailed comments on any additional costs that could be associated with the amendments to the regulations.

We welcome all comments on the issues outlined above and encourage the inclusion of supporting data.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

Done in Washington, DC, this 21st day of December, 2022.

Jennifer Moffitt,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2023–00021 Filed 1–6–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

12 CFR Part 1610

Collection of Non-Centrally Cleared Bilateral Transactions in the U.S. Repurchase Agreement Market

AGENCY: Office of Financial Research, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The U.S. Department of the Treasury's Office of Financial Research (the Office) is requesting comment on a proposed rule establishing a data collection covering non-centrally cleared bilateral transactions in the U.S. repurchase agreement (repo) market. This proposed collection would require daily reporting to the Office by certain brokers, dealers, and other financial companies with large exposures to the non-centrally cleared bilateral repo market. The collected data would be used to support the work of the Financial Stability Oversight Council (the Council), its member agencies, and the Office to identify and monitor risks to financial stability.

DATES: Comments must be received by 60 days after the date of publication in the **Federal Register**.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Michael Passante, Chief Counsel, Office of Financial Research, 717 14th Street NW, Washington, DC 20220.

Instructions: Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted electronically. In general, all comments received will be posted without change at *https://www.regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, visit *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John Zitko, Senior Counsel, OFR, (202) 594–9658, *john.zitko@ofr.treasury.gov;* or Sriram Rajan, Associate Director of Financial Markets, OFR, (202) 594–9658, *sriram.rajan@ofr.treasury.gov.*

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

The Office of Financial Research (Office) is requesting comment on a proposed rule establishing a data collection covering non-centrally cleared bilateral transactions in the U.S. repurchase agreement (repo) market (proposed collection). This proposed collection would require reporting by certain U.S. covered reporters for repo transactions that are not centrally cleared and have no tri-party custodian. This proposed collection would enhance the ability of the Financial Stability Oversight Council (Council), Council member agencies, and the Office to identify and monitor risks to financial stability. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Office is authorized to issue rules and regulations in order to collect and standardize data to support the Council in fulfilling its duties and purposes, such as identifying risks to U.S. financial stability. In a 2022 statement on nonbank financial intermediation, the Council supported a recommendation made by the Council's Hedge Fund Working Group that the Office consider ways to collect non-centrally cleared bilateral repo data.[1] Additionally, in July 2022 the Office consulted with the Council on efforts to collect non-centrally cleared bilateral repo data, including work on this proposed rule.[2] As a part of this consultation, the Office described the structure and objectives of a pilot study of the non-centrally cleared bilateral repo market conducted in the summer of 2022. This pilot study critically informed the Office's collection efforts.

This proposed collection would require reporting on non-centrally cleared bilateral repo transactions, which comprise the majority of repo activity by several key categories of institutions such as primary dealers and hedge funds.[3] In line with the Council's discussions on July 28, 2022, this proposed collection would provide visibility and transparency into a crucial segment of the U.S. repo market and, as explained below, the one remaining segment for which transaction-level data is not available to regulators.

Collection of information on the non-centrally cleared bilateral repo market is critical to the understanding of financial stability risks. The data proposed to be collected under this proposal will enable the Office to monitor risks in this market. Further, as the Council's duties relate to monitoring and responding to potential financial stability risks, the proposed collection supports the Office's statutory mandate to support the work of the Council.

II. Repurchase Agreement Market Background

The multitrillion-dollar market for repo transactions allows financial institutions to lend or borrow cash, usually overnight, using securities as collateral. A repo transaction is the sale of assets, combined with an agreement to repurchase the assets at a future date at a prearranged price. Repos are commonly used as a form of secured borrowing. The assets underlying the repo are used as collateral to protect the cash lender against the risk that the securities provider fails to repurchase the assets underlying the repurchase agreement. Market participants use repos for many reasons, such as to finance securities holdings or to borrow specific securities for use. Central banks also use repos as an important monetary policy tool.[4] The interest rate on repo borrowing is calculated based on the difference between the sale price and the repurchase price of the assets underlying the repo.

Cash lenders typically require over-collateralization from borrowers to protect themselves against a decline in the value of the securities subject to repurchase. In the non-centrally cleared bilateral repo market, the value of the securities pledged as collateral is discounted, which is referred to as a haircut. Margin requirements provide additional buffers for the variation in the value of collateral. Initial margin is a buffer meant to cover the costs of early termination of repo contracts. Drawn upon contingently, initial margin differs from a second type of periodically adjusted margin. If the market value of the collateral falls during the life of the repo, the cash lender has the right to call on its counterparty to deliver additional collateral, known as variation margin, so that the loan remains over-collateralized against future adverse price movements.

Repo transaction documentation specifies the agreement terms, including the types of securities that are acceptable to the cash lender as collateral, and risk management

[1] Financial Stability Oversight Council. ''Statement on Nonbank Financial Intermediation.'' Press Release, February 4, 2022: FSOC. *https://home.treasury.gov/news/press-releases/jy0587.*

[2] Financial Stability Oversight Council. Meeting minutes. FSOC, July 28, 2022, pg. 7. *https://home.treasury.gov/system/files/256/FSOC_20220728_Minutes.pdf.*

[3] Hempel, Samuel, R. Jay Kahn, Vy Nguyen, and Sharon Y. Ross. 2022. ''Non-centrally Cleared Bilateral Repo.'' OFR Blog. Office of Financial Research. August 24, 2022. *https://www.financialresearch.gov/the-ofr-blog/2022/08/24/non-centrally-cleared-bilateral-repo/.*

[4] Logan, Lorie K. ''Operational Perspectives on Monetary Policy Implementation: Panel Remarks on 'The Future of the Central Bank Balance Sheet.' '' Speech, Policy Conference on Currencies, Capital, and Central Bank Balances, Stanford University, Stanford, California, May 4, 2018. *https://www.newyorkfed.org/newsevents/speeches/2018/log180504.*

protocols. These protocols include haircuts and margin requirements, which address the costs related to variation in collateral value underlying repo transactions. Participants may have arrangements with each other to offset repo borrowing and lending agreements according to certain conventions. These arrangements, referred to as netting practices, relate to risk management considerations and the economic terms on which repo transactions are negotiated. Firms may employ netting practices across asset classes and instrument types outside of repo markets, on a portfolio basis. Stated differently, a repo market participant may manage netting practices on a repo counterparty across a range of financial exposures. Alternatively, a pair of counterparties may also manage their netting practices only within the context of repo transactions.

Repos can be entered into with a range of fixed maturities, though repos are often overnight transactions. For term repos, repo rates can be negotiated on either a fixed or floating basis. There are also open-tenor repos, which do not have a fixed maturity and are instead renewed by mutual agreement. A lender and a borrower may also write a repo contract to give the option to recall cash or collateral early or extend trades, especially for longer-tenor agreements with less-liquid collateral.

a. Structure of the Repurchase Agreement Market

The repo market can be divided into four segments based on whether the transactions are cleared by a central counterparty and whether a tri-party custodian is used to settle transactions.[5] Central counterparties novate trades onto their balance sheets, interposing a common counterparty for all transactions that allows participants to better manage counterparty risk. Central counterparties also provide netting benefits for both balance sheet and settlement purposes. Tri-party custodians are banks that provide collateral valuation, margining, and management services to the counterparties in a repurchase agreement. The tri-party custodian provides back-office support to both parties in the trade by settling the repo on its books and confirming that the terms of the repo, such as eligible collateral and haircuts, are met.

The four segments of the repo market span the different combinations of centrally cleared and non-centrally cleared, tri-party and bilateral. For three of these segments, data are currently collected by regulators. For the U.S. non-centrally cleared tri-party repo market, Bank of New York Mellon serves as the tri-party custodian and transaction-level data is collected under the supervisory authority of the Federal Reserve Board of Governors (Federal Reserve Board). For the centrally cleared tri-party repo market and bilateral repo market, the Fixed Income Clearing Corporation (FICC) serves as the central counterparty. The centrally cleared bilateral repo market is provided by FICC's DVP Service and includes a sponsored service, which offers eligible clients the ability to lend cash or eligible collateral via FICC-cleared delivery-versus-payment (DVP) repo transactions in U.S. Treasury and agency securities on an overnight and term basis settled on a DVP basis.[6] The centrally cleared tri-party repo market is operated through FICC's GCF Repo Service, which also includes the Centrally Cleared Institutional Tri-Party Service, through which institutional counterparties (other than investment companies registered under the Investment Company Act of 1940) can participate as cash lenders in general collateral finance repo on a specified-counterparty basis. In 2021, FICC also began a cleared tri-party service for sponsored members known as the Sponsored General Collateral Service.[7] For all centrally cleared segments, data is collected through the Office's cleared repo collection, which has given financial regulators greater visibility into this segment of repo activity.[8]

The final segment of the market is the non-centrally cleared bilateral repo market. This segment has no central counterparty or tri-party custodian, and all trades within this segment are agreed to bilaterally and are settled on a DVP basis. Unlike other segments of the market, less information is known to financial regulators about the non-centrally cleared bilateral segment. While some aggregate data are available from various regulatory filings, there is no transaction-level collection covering the market. However, research by the Office finds that this segment represents 60% of total repo lending by primary dealers and 37% of total repo borrowing.[9]

This proposed collection is designed to fill a critical gap in regulators' information on the repo market by collecting data on the non-centrally cleared bilateral repo market, the last segment for which regulators do not have a transaction-level data source. The need for a collection of data on this segment of the market to assist policymakers' understanding of how the aggregate repo market operates has been recognized by the Council since 2016, when it first called for the Office to establish a permanent repo data collection.[10] This lack of visibility was felt acutely following recent episodes in repo markets, which are described in greater detail below. These episodes included a spike in repo market rates in September 2019 and events related to the use of repo with respect to Treasury collateral in March 2020. For both of these events, substantial portions of activity in these crucial funding markets could not be observed. In the wake of these episodes of stress, market participants and regulators have pointed to this segment as a critical blind spot in a market that plays a key role in financial stability.[11]

[5] Kahn, R. Jay, and Luke Olson. ''Who Participates in Cleared Repo?'' Brief no. 21–01, Washington, DC: Office of Financial Research, 2021. For more background, see Baklanova, Viktoria, Adam Copeland, and Rebecca McCaughrin. ''Reference Guide to U.S. Repo and Securities Lending Markets.'' Working Paper no. 15–17, Washington, DC: Office of Financial Research, U.S. Department of the Treasury, 2015.

[6] Depository Trust and Clearing Corporation. ''Deposit Trust and Clearing Corporation Sponsored Service.'' Fact sheet, page 1: 2018. *https://www.dtcc.com/-/media/Files/Downloads/Clearing-Services/FICC/GOV/Sponsored-Membership-Fact-Sheet.pdf,* page 1.

[7] Depository Trust and Clearing Corporation. ''DTCC's FICC Launches New Sponsored General Collateral Service as BNY Mellon, Federated Hermes and J.P. Morgan Securities Execute First Triparty Repo Trades.'' Press release, September 7, 2021: DTCC. *https://www.dtcc.com/news/2021/september/07/dtccs-ficc-launches-new-sponsored-general-collateral-service.*

[8] 12 CFR part 1610.

[9] Hempel, Samuel, R. Jay Kahn, Vy Nguyen, and Sharon Y. Ross. 2022. ''Non-centrally Cleared Bilateral Repo.'' OFR Blog. Office of Financial Research. August 24, 2022. *https://www.financialresearch.gov/the-ofr-blog/2022/08/24/non-centrally-cleared-bilateral-repo/.* See also Infante, Sebastian, Lubomir Petrasek, Zack Saravay, and Mary Tian. 2022. ''Insights from revised Form FR2004 into primary dealer securities financing and MBS activity.'' FEDS Notes. Federal Reserve Board. August 5, 2022. *https://www.federalreserve.gov/econres/notes/feds-notes/insights-from-revised-form-fr2004-into-primary-dealer-securities-financing-and-mbs-activity-20220805.html.*

[10] Financial Stability Oversight Council. 2016 Annual Report page 14, Washington, DC: FSOC, 2016. *https://home.treasury.gov/system/files/261/FSOC-2016-Annual-Report.pdf.*

[11] Logan, Lorie K. ''Treasury Market Liquidity and Early Lessons from the Pandemic Shock.'' Remarks, Brookings-Chicago Booth Task Force on Financial Stability Meeting, 2020; International Monetary Fund. 2020. ''United States: Financial Sector Assessment Program Technical Note: Risk Oversight and Systemic Liquidity;'' Liang, Nellie, and Pat Parkinson. ''Enhancing Liquidity of the U.S. Treasury Market Under Stress.'' Working Paper no. 72, Washington, DC: Brookings Hutchins Center on Fiscal and Monetary Policy, 2020; BlackRock. 2020. ''Lessons from COVID–19: Market Structure Underlies Interconnectedness of the Financial Market Ecosystem.'' BlackRock ViewPoint; Bank Policy Institute. 2020. ''Necessary Dimensions of a Holistic Review of the Meltdown of U.S. Bond

b. Importance of Repurchase Agreement Markets and Associated Vulnerabilities

All four segments of the multitrillion-dollar repo market allow financial institutions to lend or borrow cash, usually overnight, with securities as collateral. A stable and well-functioning repo market is critical to U.S. financial markets and the U.S. economy and, thus, U.S. financial stability. The repo market is the largest short-term wholesale funding market in the U. S. Research has identified this market as subject to risks akin to bank runs that have systemic consequences.[12] While more recent distress in repo markets is discussed below, the most salient example of run risks in repo markets occurred during the Global Financial Crisis. In 2008–09, runs on repos contributed to the financial crisis. Distressed financial institutions reliant on borrowing through repo markets found their counterparties unwilling to extend credit. Similar to bank runs from earlier times, counterparties reduced the amounts lent, increased rates at which they lent, and reduced maturities of repo contracts available to distressed financial institutions. These events led to the Federal Reserve Board's collection of data on the non-centrally cleared tri-party repo market. Gaps in data and understanding yet remained. In support of its proposed cleared repo rule, the Office laid out a framework for understanding activity in the repo market and associated vulnerabilities across five functions that repo provides: a low-risk cash investment, monetization of assets, transformation of collateral, facilitation of hedging, and more generally as a support for secondary market liquidity and pricing efficiency.[13] These functions remain today, as do the associated vulnerabilities.

These underlying vulnerabilities may generally be considered in the following manner. As a deposit substitute, repo is subject to runs by cash lenders, which may withdraw funds suddenly. This occurred in 2008 as fears of Bear Stearns' collapse led to a run against its repo borrowing secured by high-quality collateral.[14] As a means of monetizing assets, the repo market is vulnerable to changes in the valuation of securities and can transmit stress into the market for securities used as collateral through fire sales of the assets as haircuts increase. This occurred in 2007, as haircuts rose on private-label mortgage-backed securities, forcing a cycle of fire sales and deleveraging that further undermined this market.[15] As a means for the transformation of collateral, the repo market is vulnerable to difficulties in sourcing securities and can transmit stress to leveraged traders who enforce basic arbitrage relationships across assets, allowing for the propagation of shocks throughout the securities financing, derivatives, and securities markets. Because repurchase agreements are used to hedge financial market risks, a loss of function in the repo market can make it more difficult for investors and financial institutions to protect themselves from risks. Finally, because the repo market is a critical piece of secondary capital markets, stress in the repo market can easily translate into broader dysfunction and liquidity spirals in secondary markets, as large portfolios of longer-term securities in the hands of levered entities are funded daily in the repo market, and an inability to roll these securities over could be disastrous for secondary markets.

Events in late 2019 and early 2020 only served to reinforce the systemic importance of the repo market and the vulnerabilities it faces. On September 17, 2019, overnight repo rates spiked to 5.3% from 2.4% the previous day.[16] Though the size of this rate increase was extraordinary, it was only one of a number of similar episodes of sudden spikes in the preceding years.[17] Several studies have found these spikes were caused by occasions when the cash available to the repo market was too small relative to the demand for funding, illustrating that demand for repo funding can be very inelastic, with rates suddenly rising in response to small changes in available funding.[18] These episodes highlight the vulnerabilities that come from repo as a deposit substitute exposed to sudden withdrawals, as well as the risks involved in rolling over large portfolios of securities through repo. Moreover, the 2019 spike in the repo market propagated into unsecured markets, including foreign exchange markets, the Federal funds market, and the market for cash Treasuries, highlighting the ability of shocks originating in the repo market to propagate across the financial system.[19]

In March 2020, during the initial phases of the COVID–19 crisis, the repo market again played an important role during a general breakdown in Treasury market functioning. Early that month, dealers and other intermediaries were overwhelmed by Treasury sales as part of a generalized ''dash for cash'' from

Markets in March;'' Citadel Securities. 2021. ''Enhancing Competition, Transparency, and Resiliency in U.S. Financial Markets;'' Feldberg, Greg. ''Fixing financial data to assess systemic risk.'' Brookings Economic Studies, 2020; ''Brookings Hutchins Center on Fiscal and Monetary Policy. 2021. ''Report of the Task Force on Financial Stability.''

[12] Gorton, Gary B., and Andrew Metrick. 2012. ''Securitized Banking and the Run on Repo.'' Journal of Financial Economics (June): pg. 425–451.

[13] 83 FR 31896, 31897–31898 (July 10, 2018).

[14] The maturity of Bear Stearns' repo funding deteriorated over several months before the firm experienced a run that first occurred on its bilateral repos secured by lower-quality assets, and then spread to its repos backed by U.S. Treasury securities. A similar dynamic occurred at a major European bank during the crisis, where the institution's bilateral repos backed by government securities dried up and only repos that were centrally cleared remained available to the firm. See also Bank for International Settlements. 2013. ''Liquidity Stress Testing: A Survey of Theory, Empirics and Current Industry and Supervisory Practices.'' October 2013. *https://www.bis.org/publ/bcbs_wp24.htm.*

[15] Gorton, Gary B. ''Information, Liquidity, and the (Ongoing) Panic of 2007.'' Working Paper no. 14649, Cambridge, Massachusetts: National Bureau of Economic Research, January 2009. *http://www.nber.org/papers/w14649;* and Iyer, Rajkamal, and Marco Macchiavelli. 2017. ''Primary Dealers' Behavior During the 2007–08 Crisis: Part II, Intermediation and Deleveraging.'' FEDS Notes. Federal Reserve Board. June 28, 2017. *https://www.federalreserve.gov/econres/notes/feds-notes/primary-dealers-behavior-during-the-2007-08-crisis-part-ii-intermediation-and-deleveraging-20170628.htm.*

[16] Afonso, Gara, Marco Cipriani, Adam Copeland, Anna Kovner, Gabriele La Spada, and Antoine Martin. 2021. ''The Market Events of Mid-September 2019.'' Economic Policy Review, Federal Reserve Bank of New York, vol. 27, no. 2 (August): 1–26. *https://www.newyorkfed.org/research/epr/2021/epr_2021_market-events_afonso.html;* Anbil, Sriya, Alyssa Anderson, and Zeynep Senyuz. 2021. ''Are Repo Markets Fragile? Evidence from September 2019.'' Finance and Economics Discussion Series 2021–028. FEDS Notes. Federal Reserve Board. *https://doi.org/10.17016/FEDS.2021.028.*

[17] Copeland, Adam, Darrell Duffie, and Yilin Yang. ''Reserves Were Not So Ample After All.'' Working Paper no. 29090, Cambridge, Massachusetts: National Bureau of Economic Research, 2021.

[18] The September 17 spike in particular appears to have been the result of a confluence of factors that restricted the supply of cash and increased the demand for cash, including a Treasury settlement, withdrawals from money market funds due to a tax deadline, and a low level of reserves. See sources in footnote 14.

[19] Tran, H. 2020. ''EM banks exposed to stress in FX swaps, a spillover from U.S. repo markets.'' Financial Times (January 8, 2020). *https://www.ft.com/content/5f8237cf-0e90-4f7d-9a0d-e4430f6fc7a1;* Afonso, Gara, Marco Cipriani, Adam Copeland, Anna Kovner, Gabriele La Spada, and Antoine Martin. 2021. ''The Market Events of Mid-September 2019.'' Economic Policy Review, Federal Reserve Bank of New York, vol. 27, no. 2 (August): 1–26. *https://www.newyorkfed.org/research/epr/2021/epr_2021_market-events_afonso.html;* Department of the Treasury, Federal Reserve Board, Federal Reserve Bank of New York, Securities and Exchange Commission, Commodity Futures Trading Commission. ''Recent Disruptions and Potential Reforms in the U.S. Treasury Market: A Staff Progress Report.'' Washington, DC: Department of the Treasury, Federal Reserve Board, Federal Reserve Bank of New York, Securities and Exchange Commission, Commodity Futures Trading Commission, 2021.

mutual funds and foreign investors.[20] Research suggests that these sales reduced large financial institutions' capacity to intermediate in the repo market given regulatory constraints on their balance sheets.[21] The pullback of these institutions from repo market intermediation was associated with increasing volatility and spreads in the repo market, again providing an example of the risks from repo as a deposit substitute.[22] Moreover, rising rates likely contributed to sales of Treasuries by leveraged funds in arbitrage trades that rely on repo financing, illustrating risks associated with monetization of assets and the transformation of collateral.[23] In order to address distress within repo markets, the Federal Reserve expanded its overnight and term repo facilities, rapidly bringing down rates in overnight repo and gradually lowering rates in term repo.[24]

Both of these episodes illustrate that the repo market is still subject to the vulnerabilities highlighted previously and perhaps has become more central to the functioning of U.S. securities and short-term funding markets. These vulnerabilities are present to a greater or lesser extent across the four different segments of the repo market. In addition, certain features of the non-centrally cleared bilateral repo market may exacerbate the risks in other segments of the market.

c. Characteristics of the Non-Centrally Cleared Bilateral Repurchase Agreement Market That Underlie Financial Stability Risks

Several characteristics of the non-centrally cleared bilateral repo market increase the potential for risks to financial stability and, thus, the Office's interest in collecting data on this segment of the overall repo market. This market is largely unobserved by financial regulators, resulting in data gaps that limit how well financial regulators can monitor risks and vulnerabilities that could affect financial stability. During a crisis, these gaps can delay analysis, understanding, and responses. While market participants may have access to some market information, the absence of inter-dealer brokers and the execution of trades through unstructured protocols such as telephone or chat systems creates challenges for financial regulators to understand market structure, market participation, and distribution of risk in real time. Since abrupt changes can have financial stability consequences, addressing data gaps is of high importance.

It is also important that the Office more deeply understand collateral risk, another market characteristic with implications for financial stability. The non-centrally cleared bilateral repo market generally contains riskier collateral than other market segments, since cleared markets are limited to Fedwire-eligible collateral such as Treasuries and agency bonds. Data from the Federal Reserve Bank of New York's Primary Dealer Statistics show that 95% of primary dealer repo lending against non-Fedwire-eligible collateral (including asset-backed securities, corporate debt and other securities) is conducted through the non-centrally cleared bilateral repo market. These collateral types have more risk factors than those that drive Treasury and agency bonds. Additionally, non-centrally cleared bilateral repo made up over 81% of primary dealer lending against agency collateral, and 100% of primary dealer lending against agency commercial mortgage-backed securities (MBS) and non-MBS debt. Supported by riskier collateral, the non-centrally cleared bilateral repo market is potentially more exposed to the risks associated with monetizing assets.

The non-centrally cleared bilateral repo market also has counterparty complexity that warrants focus. Many counterparties are institutions that do not appear in the cleared or tri-party markets that financial regulators know more about. It is likely that the non-centrally cleared bilateral market features a large amount of borrowing by highly leveraged actors such as hedge funds.[25] Financial regulators may not have information on the complexity and extent of hedge fund repo borrowing. For instance, Long-Term Capital Management (LTCM), a hedge fund that failed in 1998, built up large counterparty exposures through non-centrally cleared bilateral repo.[26] Its repo and reverse-repo transactions were conducted with 75 different counterparties, many of which were reportedly unaware of the fund's total exposure.[27] These large exposures built up through repo were a key source of potential stress from LTCM's failure, as liquidations of the underlying collateral in bankruptcy could have resulted in significantly depressed prices and broader disruptions to markets.[28]

The non-centrally cleared bilateral repo market is exposed to varying risk management conventions that require

[20] Group of Thirty Working Group on Treasury Market Liquidity U.S. Treasury Markets: Steps Toward Increased Resilience. Washington, DC: Group of Thirty, 2021. *https://group30.org/publications/detail/4950;* Liang, Nellie, and Pat Parkinson. ''Enhancing Liquidity of the U.S. Treasury Market Under Stress.'' Working Paper No. 72, Washington, DC: Brookings Hutchins Center for Fiscal and Monetary Policy, 2020; Financial Stability Board. ''Holistic Review of the March Market Turmoil.'' Basel, Switzerland, FSB, 2020; Financial Stability Oversight Council. 2020 Annual Report, Washington, DC: FSOC, 2020; Office of Financial Research. 2020 Annual Report, Washington, DC: OFR, 2020; Duffie, Darrell. 2020. ''Still the world's safe haven? Redesigning the U.S. Treasury market after the COVID–19 crisis.'' Brookings Hutchins Center for Fiscal and Monetary Policy. June 22, 2020. *https://www.brookings.edu/research/still-the-worlds-safe-haven/;* Barth, Daniel, and R. Jay Kahn. ''Hedge Funds and the Treasury Cash-Futures Disconnect.'' Working Paper no. 21–01, Washington, DC: Office of Financial Research, 2021.

[21] Financial Stability Board. Holistic Review of the March Market Turmoil. Basel, Switzerland, FSB, 2020; He, Zhiguo, Stefan Nagel, and Zhaogang Song. 2022. ''Treasury inconvenience yields during the COVID–19 crisis.'' Journal of Financial Economics, vol. 143, no. 1: pg. 57–79.

[22] Financial Stability Board. Holistic Review of the March Market Turmoil. Basel, Switzerland, FSB, 2020; He, Zhiguo, Stefan Nagel, and Zhaogang Song. 2022. ''Treasury inconvenience yields during the COVID–19 crisis.'' Journal of Financial Economics vol. 143, no. 1: pg. 57–79; Office of Financial Research. 2020 Annual Report. Washington, DC: OFR, 2020; Clark, Kevin, Antoine Martin, and Timothy Wessel. 2020. ''The Federal Reserve's Large-Scale Repo Program.'' Liberty Street Economics. Federal Reserve Bank of New York. August 3, 2020; Barth, Daniel, and R. Jay Kahn. ''Hedge Funds and the Treasury Cash-Futures Disconnect.'' Working Paper no. 21–01, Washington, DC: Office of Financial Research, 2021.

[23] Aramonte, Sirio, Andreas Schrimpf, and Hyun Song Shin. ''Non-bank financial intermediaries and financial stability.'' Working Paper no. 972, Basel, Switzerland: Bank for International Settlements, 2021; Barth, Daniel, and R. Jay Kahn. ''Hedge Funds and the Treasury Cash-Futures Disconnect.'' Working Paper no. 21–01, Washington, DC: Office of Financial Research, 2021; Kruttli, Mathias, Phillip J. Monin, Lubomir Petrasek, and Sumudu W. Watugala. ''Hedge Fund Treasury Trading and Funding Fragility: Evidence from the COVID–19 Crisis.'' Finance and Economics Discussion Series 2021–038, Board of Governors of the Federal Reserve System, 2021.

[24] Barth, Daniel, and R. Jay Kahn. ''Hedge Funds and the Treasury Cash-Futures Disconnect.'' Working Paper no. 21–01, Washington, DC: Office of Financial Research, 2021; Clark, Kevin, Antoine Martin, and Timothy Wessel ''The Federal Reserve's Large-Scale Repo Program.'' Liberty Street Economics. Federal Reserve Bank of New York. August 3, 2020.

[25] Hempel, Samuel, R. Jay Kahn, Vy Nguyen, and Sharon Y. Ross. 2022. ''Non-centrally Cleared Bilateral Repo.'' August 24, 2022. The OFR Blog. Office of Financial Research. *https://www.financialresearch.gov/the-ofr-blog/2022/08/24/non-centrally-cleared-bilateral-repo/.*

[26] Parkinson, Patrick M. *Report on Hedge Funds, Leverage, and the Lessons of Long-Term Capital Management.* Testimony, U.S. House, May 6, 1999, Cong., Washington, DC: Federal Reserve Board, 1999. *https://www.federalreserve.gov/boarddocs/testimony/1999/19990506.htm;* Dixon, Lloyd, Noreen Clancy, and Krishna B. Kumar. 2012. *Hedge Funds and Systemic Risk.* Santa Monica, California: RAND Corporation. *http://www.jstor.org/stable/10.7249/j.ctt1q60xr.11.*

[27] Parkinson, Patrick M. *Report on Hedge Funds, Leverage, and the Lessons of Long-Term Capital Management.* Testimony, U.S. House, May 6, 1999, Cong., Washington, DC: Federal Reserve Board, 1999.

[28] Ibid.

greater insight. These conventions include but are not limited to margining and settlement. For instance, the variation in margining practices across competing intermediaries may create competitive pressures that drive margins to lower levels than justified by prudent risk management.[29] Similarly, the Treasury Market Practices Group found settlement practices vary widely and expressed concern that ''bespoke bilateral processes may reflect differences in the level of understanding among market participants of the inherent risks of SFT clearing and settlement.'' [30]

III. Data Available on U.S. Repurchase Agreement Activity

As demonstrated during the Global Financial Crisis and the COVID–19 pandemic, high-quality information is one of the best tools for identifying the build-up of risk. While improvements have been made, especially through the Office's collection of cleared repo data, a full transaction-level picture of all segments of the U.S. repo market is still unavailable. This proposed collection would cover certain non-centrally cleared bilateral repo transactions, allowing the Office to gather data on a mandatory basis on what it estimates to be a substantial share of the total U.S. repo market. This proposed collection, in combination with the Office's other repo collections, would provide visibility and transparency into every major segment of the U.S. repo market, in line with the Council's recommendations. This section reviews data provided to regulators on other segments of the repo market and describes the pilot collections of repo data preceding this proposed rule.

a. Tri-Party Repurchase Agreements

The Federal Reserve Board has supervisory authority over the Bank of New York Mellon, the major tri-party custodian bank and, on a mandatory basis pursuant to its supervisory authority, collects daily data on transactions in tri-party repo markets through the Federal Reserve Bank of New York.[31] The data include information on the interest rate, the counterparties, the collateral pledged, the type of transaction, the transaction initiation date, the transaction effective date, the transaction maturity date, whether the transaction is open-ended, the value of the funds borrowed, whether the transaction includes an option (*e.g.,* the ability to extend or terminate early), and, if the transaction includes an option, the minimum notice period required to exercise it.[32] Aggregated data from this collection is made available through the Federal Reserve Bank of New York's reference rates (including the Secured Overnight Financing Rate (SOFR); the Broad General Collateral Rate (BGCR); and the Tri-Party General Collateral Rate (TGCR); the Federal Reserve Bank of New York's Tri-Party Statistics; and the Office's U.S. Repo Markets Data Release.

b. Centrally Cleared Repurchase Agreements

The Office collects transaction-level data on cleared repo markets pursuant to the Office's rule on cleared repo. For general collateral repurchase agreements through FICC's GCF Repo Service and the Sponsored General Collateral Service, the data collected under the rule include the interest rate; details on the collateral pledged; the date and time the transaction is initiated, becomes effective, and matures; the value of funds borrowed; the identities of the counterparties; and the net value and collateral identifier for collateral delivered. For specific collateral repurchase agreements through FICC's DVP Service, the data includes the same fields as well as the broker. For both these segments, aggregates of the data are made public through the Federal Reserve Bank of New York's reference rates noted above and the Office's U.S. Repo Markets Data Release. In addition, transaction-level data has been used by the Office and the Federal Reserve Bank of New York in briefs and working papers, as well as to inform regulators on developments in short-term funding markets and in the Office's annual reports.[33]

c. Non-Centrally Cleared Bilateral Repurchase Agreements

Unlike the other three repo market segments, the wholly bilateral nature of non-centrally cleared repo means there is no central source for comprehensive transaction-level data on activity in this segment. To better understand the bilateral repo market, determine the value of a potential data collection, and gain insights into the design of such a collection, the Office conducted a pilot in 2015 in partnership with the Federal Reserve and the Securities and Exchange Commission (SEC), to collect information on both centrally cleared and non-centrally cleared bilateral repo transactions. The 2015 pilot gathered data from a subset of U.S.-based brokers and dealers. The results and lessons learned were published in January 2016.[34] In order to update and expand upon the 2015 pilot and address the Council's more recent recommendations, in 2022 the Office conducted another pilot on the non-centrally cleared bilateral repo market.[35] Significant lessons were learned about the non-centrally cleared bilateral repo market from both pilots. These have been incorporated into the design of this proposed collection, which would provide data on this final segment of the market of comparable granularity to what is collected on tri-party and cleared repo.

IV. Justification for Proposed Collection

a. Collection of Non-Centrally Cleared Bilateral Repurchase Agreement Data

The collection of data on the non-centrally cleared bilateral segment of the repo market marks a significant step in carrying out the Council's recommendation to expand and make

[29] The Group of Thirty report cited above notes competitive pressures in the repo market ''driving haircuts down (sometimes to zero).'' See also Group of Thirty Working Group on Treasury Market Liquidity. *U.S. Treasury Markets: Steps Toward Increased Resilience.* Washington, DC: Group of Thirty, G30, 2021. *https://group30.org/publications/detail/4950.*

[30] Treasury Market Practices Group. ''*TMPG Releases Updates for Working Groups on Clearing and Settlement Practices for Treasury SFTs, Treasury Market Data and Transparency.*'' Press Release, November 5, 2021.

[31] The Bank of New York Mellon currently serves as the sole tri-party custodian in the United States. See 82 FR 41259, 41260 (August 30, 2017).

[32] 82 FR 41259, 41260 (August 30, 2017).

[33] Briefs and working papers using data from the Office's cleared repo collection include Barth, Daniel, and R. Jay Kahn. ''Basis Trades and Treasury Market Illiquidity.'' Brief no. 20–01, Washington, DC: Office of Financial Research, 2020; Clark, Kevin, Adam Copeland, R. Jay Kahn, Antoine Martin, Matthew McCormick, Will Riordan, and Timothy Wessel. ''How Competitive are U.S. Treasury Repo Markets?'' New York, New York: Liberty Street Economics, Federal Reserve Bank of New York, February 18, 2021; Kahn, R. Jay, and Luke Olson. ''Who Participates in Cleared Repo?'' Brief no. 21–01, Washington, DC: Office of Financial Research, 2021; Clark, Kevin, Adam Copeland, R. Jay Kahn, Antoine Martin, Mark E. Paddrik, and Benjamin Taylor. ''Intraday Timing of General Collateral Repo Markets,'' Liberty Street Economics, Federal Reserve Bank of New York, 2021; Hempel, Samuel, and R. Jay Kahn. ''Negative Rates in Bilateral Repo Markets.'' Brief no. 21–03, Washington, DC: Office of Financial Research, 2021; Barth, Daniel, and R. Jay Kahn. ''Hedge Funds and the Treasury Cash-Futures Disconnect.'' Working Paper no. 21–01, Washington, DC: Office of Financial Research, 2021.

[34] Schreft, Stacey. 2016. ''Lessons from the Bilateral Repo Data Collection Pilot.'' The OFR Blog. Office of Financial Research. January 13, 2016.

[35] Falaschetti, Dino. *Remarks by Director Falaschetti at the Open Session of the Meeting of the Financial Stability Oversight Council.* February 4, 2022; Martin, James. August 1, 2022. ''OFR Continues Efforts to Fill Key Gap in Financial Data.''; Hempel, Samuel, R. Jay Kahn, Vy Nguyen, and Sharon Y. Ross. 2022. ''Non-centrally Cleared Bilateral Repo.''

permanent the collection of data on the U.S. repo market. The Council first recommended a collection of non-centrally cleared bilateral repo data in its 2016 annual report.[36] The Office noted in its 2018 rulemaking on cleared repo that it was considering subsequent rulemaking on the non-centrally cleared bilateral segment of the repo market.[37] In the wake of the March 2020 illiquidity in the Treasury market, both the Office's 2020 Annual Report and the Council's 2020 Annual Report highlighted the non-centrally cleared bilateral repo market as an important blind spot in financial stability monitoring. The Council again recommended a collection of non-centrally cleared bilateral repo data in its 2021 annual report to Congress.[38] Similarly, in a 2022 statement on nonbank financial intermediation, the Council expressed support for the recommendation by the Hedge Fund Working Group that the Office consider ways to collect non-centrally cleared bilateral repo data.[39]

The collection of transaction-level data on non-centrally cleared bilateral repos is key to the Council's effective identification and monitoring of emerging threats to the stability of the U.S. financial system and would fill in the remaining gap in coverage following the Office's previous rulemaking on the cleared repo market. If the proposal to collect from certain brokers, dealers, and other financial companies with over $10 billion in the sum of extended guarantees and outstanding non-centrally cleared bilateral repo borrowing is adopted, the Office expects to observe over 90% of the total non-centrally cleared bilateral repo market by volume, with approximately 40 reporters. The Office also proposes additional provisions below to capture any other financial companies with over $10 billion in extended guarantees and non-centrally cleared bilateral repo borrowing from non-broker, non-dealer lenders, to cover any major potential data gaps that currently exist or could develop in this market segment. With this collection, in combination with the Office's collection of cleared repo data and the collection of tri-party data by the Federal Reserve, substantially all of the activity in the repo market would be observed on outstanding commitments.

From a financial stability perspective, it is important to monitor transactions in the non-centrally cleared bilateral repo segment for several reasons. Importantly, activity across the different segments of the repo market is linked. The non-centrally cleared bilateral market, for instance, serves as a close substitute for centrally cleared bilateral repo, particularly in the sponsored segment of the market, where customers that are not direct clearing members of FICC, such as hedge funds and money market funds, can participate in transactions with clearing members and have such transactions submitted to FICC for clearing.

Migration to and from sponsored repo is also an area of interest. In times of stress, activity may move between sponsored repo and non-centrally cleared bilateral repo. Dealers' decisions to engage in sponsored repo may be affected by factors that affect their outstanding commitments. Examples include changes in the supply of cash to money market funds and the size of netting benefits provided by sponsored repo. In order to understand these shifts to and from sponsored repo, data on outstanding commitments in the non-centrally cleared bilateral repo market are required.

Another factor that may affect flows into and out of sponsored repo is the development of guaranteed repo. Customers may move from non-centrally cleared bilateral repo to the same with guarantors as an alternative to transacting though tri-party repo or sponsored repo. Tri-party and sponsored repo platforms offer, through design, risk-reducing characteristics for cash lenders and cash borrowers.

Additionally, as guaranteed repo replicates the profile of offsetting legs of the same repo transaction with different counterparties, yet has different balance sheet implications, guaranteed repo may be an alternative to traditional repo market financial intermediation. This provides incentives for some financial institutions to participate in repo markets when financial intermediaries are economically constrained. For all these reasons, guaranteed repo addresses various needs in the non-centrally cleared bilateral repo market. A data collection regarding this final segment of the repo market is therefore essential to providing regulators with a complete picture of repo market activity and to realizing the full potential of existing data collections on other segments of the repo market.

As noted above, because the non-centrally cleared bilateral repo market has no central counterparty or custodian, because of the nature of collateral underlying trades in non-centrally cleared bilateral repo, and because of the types of counterparties that have large exposures to non-centrally cleared bilateral repo, these data would provide insights into a market that may be a particularly salient financial system vulnerability. Many of the counterparties involved in the market, such as non-bank and non-primary dealers, are difficult to monitor with existing regulatory collections. Transaction-level data would provide regulators with the granularity necessary to monitor exposures of individual counterparties on a high-frequency basis, which is essential in a market where crises are often too short-lived for other monthly or quarterly reporting to capture. Moreover, data on collateral would allow regulators to monitor exposures on particular classes of securities, margining practices that protect participants from movements in the value of collateral, and the potential transmission of repo market stress into securities markets. Timestamps and details of trading venues would allow regulators to monitor activity in a market which is often segmented, and where intra-day liquidity concerns play a key role in the creation of stress.

The non-centrally cleared bilateral repo market currently lacks transparency, even to market participants, on a variety of dimensions. Providing aggregated statistics on rates, haircuts, and volumes could provide greater clarity to market participants on characteristics of the market relevant to their risk-management and other decision making. This could take a form similar to the Office's current disclosure of aggregated cleared repo data through the Office's U.S. Repo Markets Data Release. Introducing data standards through the rule's reporting process into this decentralized market may also improve the ability to reconcile records between firms in the event of a crisis.

Questions

1. How could aggregated data on non-centrally cleared bilateral repo be used to foster greater transparency and improve price discovery in the repo market?

[36] Financial Stability Oversight Council. *2016 Annual Report, p. 111.* Washington, DC: FSOC, 2016. *https://home.treasury.gov/system/files/261/FSOC-2016-Annual-Report.pdf.*

[37] **Federal Register**. 2018. Vol. 83, no. 132, pg. 31898, July 10, 2018.

[38] Office of Financial Research. *2020 OFR Annual Report,* Washington, DC: OFR, 2020. *https://www.financialresearch.gov/annual-reports/files/OFR-Annual-Report-2020.pdf;* Financial Stability Oversight Council. *2020 Annual Report.* pg. 38–41, Washington, DC. FSOC, 2020. *https://home.treasury.gov/system/files/261/FSOC2020AnnualReport.pdf;* Financial Stability Oversight Council; *2021 Annual Report,* pg. 160, Washington, DC: FSOC, 2021. *https://home.treasury.gov/system/files/261/FSOC2021AnnualReport.pdf.*

[39] Financial Stability Oversight Council. ''Nonbank Financial Intermediation.'' Press Release, February 4, 2022: FSOC. *https://home.treasury.gov/news/press-releases/jy0587.*

2. How should the Office regard and collect information on the risks of bank guaranteed repo?

b. Uses of the Data Collection

This proposed collection would be used by the Office to fulfill its purpose, responsibilities, and duties under Title I of the Dodd-Frank Act, including improving the Council's and Council member agencies' monitoring of the financial system and in identifying and assessing potential financial stability risks. The additional daily transaction data this proposed collection would provide would facilitate identification of potential repo market vulnerabilities and would also help identify shifting repo market trends that could be destabilizing or indicate stresses elsewhere in the financial system. Such trends might be reflected in indicators of the volume and price of funding in the repo market at different tenors, differentiated by the type and credit quality of participants and the quality of underlying collateral. Analyzing the collateral data from this collection together with other data available to the Office, the Council, and Council member agencies would enable a clearer understanding of collateral flows in securities markets and potential financial stability risks.

Wholesale funding rates critically relate to financial stability, as they describe the borrowing costs financial institutions may be subject to or convey through periods of distress. It is important for wholesale funding rates to reflect actual borrowing costs. Repo markets provide this relationship under collateralized terms. SOFR is a benchmark wholesale funding rate recommended by the Alternative Reference Rates Committee and is computed based on cleared repo transactions on Treasury collateral. The Office's 2022 pilot study demonstrated that non-centrally cleared bilateral repo markets constitute a large portion of wholesale funding in repo markets. Consequently, another potential use of the Office's proposed collection is to enrich the calculation of SOFR with the information obtained.

The Office may also use the data to sponsor and conduct additional research.[40] This research may include the use of these data to help fulfill the duties and purposes under the Dodd-Frank Act relating to the responsibility of the Office's Research and Analysis Center to develop and maintain independent analytical capabilities to support the Council and relating to the programmatic functions of the Office's Data Center. For example, access to data on non-centrally cleared bilateral repos would allow the Office to conduct research related to the Council's analysis of potential risks arising from securities financing activities and nonbank financial companies.

Consistent with the Dodd-Frank Act, the Office may share the data collection and information with the Council, Council member agencies, and the Bureau of Economic Analysis[41] and will also make the data available to the Council and member agencies as necessary to support their regulatory responsibilities.[42] When sharing the data as referenced above, the data and information: (i) must be maintained with at least the same level of security as used by the Office; and (ii) may not be shared with any individual or entity without the permission of the Council.[43] In addition, such sharing will be subject to the confidentiality and security requirements of applicable laws, including the Dodd-Frank Act.[44] Pursuant to the Dodd-Frank Act, the submission of any non-publicly available data to the Office under this proposed collection will not constitute a waiver of, or otherwise affect, any privilege arising under federal or state law to which the data or information is otherwise subject.[45]

After consultation with the member agencies as required under the Dodd-Frank Act, certain data, including aggregate or summary data from this proposed collection, may be provided to financial industry participants and to the general public to increase market transparency and facilitate research on the financial system, to the extent that intellectual property rights are not violated, business confidential information is properly protected, and the sharing of such information poses no significant threats to the U.S. financial system.[46]

c. Legal Authority

The ability of the Office to collect non-centrally cleared bilateral repo data in this proposed collection derives in part from the authority to promulgate regulations regarding the type and scope of financial transaction and position data from financial companies on a schedule determined by the Director in consultation with the Council.[47] The Office consulted with the Council on the proposed permanent collection of non-centrally cleared bilateral repo data at the Council's July 28, 2022 meeting.[48]

The Office also has authority to promulgate regulations pursuant to the Office's general rulemaking authority under section 153 of the Dodd-Frank Act, which authorizes the Office to issue rules, regulations, and orders to the extent necessary to carry out certain purposes and duties of the Office.[49] In particular, the purposes and duties of the Office include supporting the Council in fulfilling its duties and purposes, and supporting member agencies, by collecting data on behalf of the Council and providing such data to the Council and member agencies, and standardizing the types and formats of data reported and collected.[50] The Office must consult with the Chairperson of the Council prior to the promulgation of any rules under section 153.[51] As noted above, the Office consulted with the Council on July 28, 2022.

This proposed collection would support the Council and member agencies by addressing the Council's recommendation to expand and make permanent the collection of data on the non-centrally cleared bilateral repo market; helping the Council and member agencies identify, monitor, and respond to risks to financial stability; and identifying gaps in regulation that could pose risks to U.S. financial stability. The Office has verified that transaction information on the non-centrally cleared bilateral repo market required to fulfill the purposes of this proposed collection is not currently available to the Council or member agencies.

The Office's statutory authority allows for the collection of transaction and position data from financial companies. ''Financial company,'' for purposes of the Office's authority, has the same meaning as in Title II of the Dodd-Frank Act.[52] For this proposed collection, the Office expects that covered reporters will be ''financial companies'' as defined in Title II because they are

[40] 12 U.S.C. 5343(b)(2).

[41] 12 U.S.C. 5343(b)(1).

[42] 12 U.S.C. 5343(b), 12 U.S.C. 5344(b)(5).

[43] 12 U.S.C. 5333(b)(5).

[44] 12 U.S.C. 5343(b), 5344(b)(3).

[45] 12 U.S.C. 5343(b), 5322(d)(5).

[46] 12 U.S.C. 5344(b)(6).

[47] 12 U.S.C. 5344(b)(1)(B)(iii).

[48] Financial Stability Oversight Council. Meeting Minutes, pg. 7. July 28, 2022. *https://home.treasury.gov/system/files/256/FSOC_20220728_Minutes.pdf.*

[49] 12 U.S.C. 5343(a), (c)(1).

[50] 12 U.S.C. 5343(a). The Council's purposes and duties include identifying risks and responding to threats to U.S. financial stability; monitoring the financial services marketplace to identify potential threats to U.S. financial stability; making recommendations that will enhance the integrity, efficiency, competitiveness, and stability of the U.S. financial markets; and identifying gaps in regulation that could pose risks to the financial stability of the United States. 12 U.S.C. 5322(a).

[51] 12 U.S.C. 5343(c)(1).

[52] 12 U.S.C. 5341(2).

incorporated or organized under Federal or state law and are companies ''predominantly engaged'' in activities that the Federal Reserve Board has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 [53] (or they are a subsidiary thereof). For a company to be ''predominantly engaged'' in activities that are financial in nature or incidental thereto, either (1) at least 85% of the total consolidated revenues of the company (determined in accordance with applicable accounting standards) for either of its two most recently completed fiscal years must be derived, directly or indirectly, from financial activities; or (2) based upon all the relevant facts and circumstances, the consolidated revenues of the company from financial activities must constitute 85% or more of the total consolidated revenues of the company.

Dodd-Frank Act section 201(b) required the Federal Deposit Insurance Corporation (FDIC) to issue a rule establishing the criteria for determining whether a company is predominantly engaged in activities that are financial in nature or incidental thereto for purposes of Title II. The final rule adopted by the FDIC indicates that the determination of whether an activity is financial in nature is based upon section 4(k) of the Bank Holding Company Act of 1956, and that since the Federal Reserve Board is the agency with primary responsibility for interpreting and applying section 4(k), the FDIC coordinated its rulemaking pursuant to § 201(b) of the Dodd-Frank Act with the Federal Reserve Board's rulemaking defining the term ''predominantly engaged in financial activities'' for purposes of Title I of the Dodd-Frank Act.[54]

Consistent with the Federal Reserve Board's final rule, the FDIC's final rule interpreting how to evaluate whether an entity is a ''financial company'' for purposes of Title II of the Dodd-Frank Act includes the activities of the types of entities proposed to be covered reporters, including underwriting, dealing in or making a market in securities; and lending, exchanging, transferring, investing for others, or safeguarding money or securities. Given the level of experience, expertise, and market credibility necessary for the exposure thresholds proposed under this rule, such entities will likely be financial companies and thus covered reporters. While the Office currently expects few, if any, entities to meet the covered reporter definition thresholds under the provision that requires non-Securities Broker, non- securities dealer, non-government securities broker, or non-government securities dealer financial companies to report, this provision is explicitly limited to financial companies as defined in 12 U.S.C. 5341(2).

V. Collection Design

The proposed regulatory text lists the requirements specifically relevant to this proposed collection. It also includes a table that describes the data elements that covered reporters would be required to submit. The Office expects to publish filing instructions regarding matters such as data submission mechanics and formatting in connection with any final rule on the Office's website.

a. Scope of Application

This proposed collection would require the submission of transaction information by any covered reporter whose average daily total outstanding commitments to borrow cash and extend guarantees through non-centrally cleared bilateral repo contracts over all business days during the prior calendar quarter is at least $10 billion. This materiality threshold is inclusive of both overnight and intraday commitments. For example, for a given day, a reporter may have two outstanding commitments to borrow beginning on the same day with an overnight maturity:

- First, the reporter has outstanding commitments to borrow $100 million from customer A in exchange for $100 million of securities.
- Second, the reporter has commitments to lend customer B $100 million in exchange for $100 million of securities.

In this example, the reporter's total gross outstanding commitments for these two trades is $200 million and total outstanding commitments to borrow cash is $100 million.

The Office proposes a focus on borrowing for reasons related to both principle and practice. In principle, borrowers are the sources of leverage in the financial system and are consequently naturally linked to financial stability. From a practical standpoint, the same market coverage can be achieved by sampling fewer borrowers than lenders. Within a choice of market coverage on lenders, the diversity of lending institution types is also greater and creates consequent operational challenges in supporting a collection. Diversity in composition and familiarity with reporting standards could also challenge the success of a daily collection. Based on the above, the Office believes that the focus on borrowers rather than lenders is an appropriate approach.

This proposed rule would require reporting under this materiality threshold from two categories of financial companies:

- *Category 1:* securities broker, securities dealers, government securities brokers, and government securities dealers, all as defined by and registered pursuant to the Securities Exchange Act of 1934 (Exchange Act),[55] and
- *Category 2:* any financial company that is not a Securities Broker, securities dealer, government securities broker, or government securities dealer, whose average of daily total outstanding commitments to borrow cash from or extend guarantees to lenders is at least $10 billion—through non-centrally cleared bilateral repo with any other entity that is not in category 1—over all business days during the prior calendar quarter. Additionally, the financial company in category 2 has assets or assets under management exceeding $1 billion if it meets any one of the following criteria:

A. If an investment adviser registered pursuant to the Investment Advisers Act of 1940 provides continuous and regular supervisory or management services to securities portfolios valued at $1 billion or more in assets under that law; or

B. If the firm is not an ''investment adviser,'' but it files a required disclosure of its balance sheet with a primary financial regulatory agency,[56] and has more than $1 billion in assets under that disclosure; or

C. If the firm does not file a required disclosure of its balance sheet with a primary financial regulatory agency but it does file a required disclosure with any other Federal financial regulator, and has more than $1 billion in assets under that disclosure; or

D. If the firm does not file a required disclosure of its balance sheet with any primary financial regulatory agency but it does file a required disclosure with any state regulator, and has more than $1 billion in assets under that disclosure; or

[53] 12 U.S.C. 1843(k).

[54] A ''financial company'' also includes a bank holding company or a nonbank financial company supervised by the Federal Reserve Board. 12 U.S.C. 5381(a)(11).

[55] The terms broker and dealer are defined in 15 U.S.C. 78c(a)(4), and (5), respectively. Broker and dealer registration requirements are contained in 15 U.S.C. 78o. The terms government securities broker and government securities dealer are defined in 15 U.S.C. 78c(a)(43) and (44), respectively. Government securities broker and government securities dealer registration requirements are contained in 15 U.S.C. 78o–5.

[56] 12 U.S.C. 5301(12).

E. If the firm does not file a required disclosure of its balance sheet with any state regulator or primary financial regulatory agency but its stated assets to outside investors or creditors in audited financial statements, and has more than $1 billion in assets under that disclosure; or

F. If the firm has not done any of the above but has disclosed assets in filings with the Internal Revenue Service and has more than $1 billion in assets under that disclosure.

The Office distinguishes between assets and assets under management in the above sequence, because of how an agent acts on the part of other parties. Investment advisers primarily provide investment management services as fiduciary agents, using a wide variety of models and vehicles. They engage in activities such as entering into repurchase agreements, acting as cash borrowers, and buying and selling derivatives on behalf of clients. These activities can take place at the portfolio level or at the adviser level and then subsequently allocated to their managed funds or portfolios. Unlike other financial companies, the value of these services is not fully reflected on the balance sheet of the adviser, except in advisory fee receivables. As a result, the use of assets under management better represents the market value of investment activities provided and should be used in the threshold computation.

The Office is proposing the asset size threshold for financial companies that are not Brokers, Dealers, government securities brokers or government securities dealers in order to limit the set of financial companies required to calculate their repo exposures to a grouping of entities whose activities are consequential to the non-centrally cleared bilateral repo market. Only financial companies included within these categories and that meet the transaction volume threshold discussed below would be required to report as covered reporters under this proposed collection.

The Office believes the proposed $10 billion outstanding commitments threshold indicates sufficient transactional volume for a Securities Broker, securities dealer, government securities broker, or government securities dealer to be considered material in the repo market. In particular, the Office believes this threshold would cover over 90% of the non-centrally cleared bilateral repo market, with approximately 40 reporters. However, because of the lack of transparency in this market noted above, there is necessarily some uncertainty on the number of reporters and breadth of the market this definition would include. As such, the Office is seeking comment on the nature and level of the threshold.

By collecting from certain brokers, dealers, and financial companies with large exposures to the repo market, the Office proposes to leverage the existing structure of the repo market, where nearly all trades are intermediated by either dealers, or financial companies who play a similar role to brokers and dealers, based on the Office's research. However, it is possible that some trades in the repo market do not go through securities broker, securities dealers, government securities brokers, or Government securities dealers. Due to the lack of transparency in the non-centrally cleared bilateral repo market, the market share of these ''peer-to-peer'' trades, which bypass traditional intermediaries, is not knowable without an existing comprehensive collection. Moreover, it is possible that peer-to-peer repo could expand in the future as market structure evolves.

As a result, the Office is also proposing to include, in addition to the categories of financial companies noted above, any financial company that is not a Securities Broker, securities dealer, government securities broker, or government securities dealer with over $1 billion in assets or assets under management whose average of daily total outstanding commitments to borrow cash (inclusive of both overnight and all intraday transactions) through non-centrally cleared bilateral repo from other entities that are not a Securities Broker, securities dealer, government securities broker, or government securities dealer is also at least $10 billion over all business days during the prior calendar quarter. This formulation is intended to be flexible enough to cover future developments in the market, including the emergence of new entities replacing existing repo intermediaries. The Office is requesting comment as to how prevalent the case of financial companies fitting this definition would be.

Though the Office believes that few financial companies are likely to fit this definition, it would require all financial companies with greater than $1 billion in assets or assets under management to determine whether they are covered reporters on a quarterly basis. Since many financial companies have limits on their ability to borrow, we believe that this requirement would apply to roughly 2,000 financial companies.[57] Assuming it takes three hours per quarter to determine which counterparties to the firm are non-Securities Broker, non-securities dealer, non-government securities broker, or non-government securities dealer institutions and to calculate the average open borrowings from these institutions, and using an estimated hourly wage of $126, the Office estimates the cost for a single firm to determine its reporting obligations on an ongoing annual basis of this provision would be $1,512. This would lead to a total cost of $3.024 million across all financial companies that would need to determine whether they are covered reporters. The Office is also requesting comment on whether these calculations are reasonable and in particular whether there might be adjustments needed to its estimates of either the ongoing annual cost per financial company or the total number of financial companies that would need to make this determination on a quarterly basis.

The brokers, dealers, or other financial companies meeting the thresholds above would be required to start submitting data under this rulemaking beginning on the first business day of the third full calendar quarter after the calendar quarter in which the firm meets the relevant materiality threshold. For example, if such brokers, dealers, or other financial companies were to surpass the threshold beginning with the quarter ending on March 31 of a given year, those institutions would become subject to the reporting requirements of the rule on the first business day of the calendar quarter that begins after two intervening calendar quarters—in this case, October 1.

A covered reporter whose volume falls below the $10 billion threshold for at least four consecutive calendar quarters would have its reporting obligations cease. For example, if a broker, dealer, or other financial company that is a covered reporter ceases to meet the $10 billion threshold beginning with the quarter ending June 30 of a given year, and remains below the $10 billion threshold in each of the following three quarters (in this example, March 31 of the following year), its reporting obligations would cease as of April 1.

Questions

1. Is the $10 billion materiality threshold for identifying securities broker, securities dealers, government

[57] This number is based an Office estimate of the number of private funds, real estate investment trusts, pension funds, and insurance funds that have over $1 billion in assets or assets under management.

securities brokers, and government securities dealers as covered reporters clear and appropriate for ensuring the Office collects the vast majority of transactions in the non-centrally cleared bilateral repo market? Would a higher or lower threshold better accomplish the goals of the collection? Would a threshold based on gross activity (repo borrowing plus repo lending) be more appropriate for capturing relevant brokers and dealers?

2. Please estimate the volume that would be missed by limiting the collection to only capture transactions in which at least one of the counterparties is a Securities Broker, securities dealer, government securities broker, or government securities dealer.

3. How many non-Securities Broker, non-securities dealer, non-government securities broker, or non-government securities dealer financial companies would be included as covered reporters under the provisions described above? Is the $1 billion in assets or assets under management threshold an appropriate measure? What characteristics, other than the ones defined, describe these financial companies?

4. Does the two-quarter phase-in period for certain brokers and dealers that become covered reporters after the effective date of the rule provide sufficient time to comply with the data reporting requirements?

5. Are the Office's estimates of the ongoing annual cost of determining whether a financial company with greater than $1 billion in assets or assets under management is a covered reporter on a quarterly basis and the number of companies that would likely be required to make this determination reasonable? How could they be improved?

6. Are there other sources of assets or assets under management which should be included in the threshold criteria?

b. Scope of Transactions

The Office is defining a non-centrally cleared bilateral repurchase agreement transaction as one in which one party agrees to sell securities to a second party in exchange for the receipt of cash, and the simultaneous agreement of the former party to later reacquire the same securities (or any subsequently substituted securities) from that same second party in exchange for the payment of cash; or an agreement of a party to acquire securities from a second party in exchange for the payment of cash, and the simultaneous agreement of the former party to later transfer back the same securities (or any subsequently substituted securities) to the latter party in exchange for the receipt of cash. In all cases the agreement does not involve a tri-party custodian nor is cleared with a central counterparty. This definition includes, but is not limited to, transactions that are executed under a Master Repurchase Agreement (MRA) or Global Master Repurchase Agreement (GMRA), or which are agreed to by the parties as subject to the provisions of 11 U.S.C. 559. The rights established in this code relate to contractual characteristics of interest to the Office. Notwithstanding the above, transactions conducted under a Securities Lending Agreement (SLA) or a Master Securities Lending Agreement (MSLA) are not considered repurchase agreements, nor are repurchase agreements arising from either participation in a commercial mortgage loan or the initial securitization of a residential mortgage loan. The reasons for exclusion of all such transactions relate to their greater use to support specific demands for securities. By contrast, repurchase agreements more specifically relate to loan provisions. Additionally, the Office has chosen to exclude MSLA and Global Master Securities Lending Agreement (GMSLA) transactions from the proposed rule due to the SEC's proposed Reporting of Securities Loans.[58] As a result and depending upon the form and timing of any final SEC rule, reporting these transactions to the Office could be duplicative. Sell/buy-back agreements have also been excluded because in lacking the contractual documentation characteristics of other repo transactions, collateral sales and repurchases are separated from borrowing and lending commitments, respectively. While sell/buy-back agreements accomplish similar goals to repo transactions, these agreements are recorded differently from MRA, GMRA, MSLA, and GMSLA agreements and may have contractual characteristics and names that are different from the preceding types. The Office seeks comment on such assertions.

The Office has noted that some transactions that would be covered under the proposed rule are likely to be with counterparties outside of the United States (U.S.). Based on a review of relevant foreign supervisory reporting requirements and outreach to industry, the Office believes that because the proposed rule would only require reporting by U.S. financial companies, there would be no intersection with the financial companies covered by foreign collections. As a result, the Office does not believe the proposed collection would require duplicative reporting from financial companies that would be covered under its rule.

Covered reporters would be required to report on all transactions that meet the above-described characteristics. This would include transactions by the covered reporter settled internationally or denominated in currencies other than in U.S. dollars. Excluding transactions settled outside of the U.S. would allow for covered reporters to avoid reporting by choosing to conduct the same transaction but settling that transaction outside the U.S. Meanwhile, collecting data on repurchase agreements denominated in foreign currencies would give the Office greater information on cross-border exposures associated with repo borrowing.

Questions

1. The proposed rule text currently covers agreements under an MRA or GMRA. The Office's experience with the 2015 OFR Bilateral Repo Pilot yielded findings that equivalent trades to repurchase agreements are often instead contractually executed under Securities Lending Agreements or Master Securities Lending Agreements for reasons of convenience.[59]

a. How would potential reporters view the burden associated with the inclusion of trades contractually executed on a principal basis (*i.e.,* not as a securities lending agent for another party) under an SLA or MSLA? What burden would be associated with excluding trades contractually executed under SLAs or MSLAs?

b. How do you view the economic comparability of repurchase agreements and securities lending agreements executed against cash on a principal basis?

c. Would it be useful to restrict the definition of repurchase agreement to transactions under an GMRA or MRA? Would the volume of reported transactions be substantially narrower under that definition?

d. What is the effect of referencing transactions agreed to by the parties as being subject to 11 U.S.C. 559?

2. If the Office decided to collect information on sell/buy-back transactions, do potential reporters foresee any burdens in reporting those in the same format as repo transactions?

3. Are there other types of transactions the Office should consider collecting in this or future collections?

[58] Release No. 34–93613, Reporting of Securities Loans, 86 FR 69802, 69803, fn. 2. December 8, 2021.

[59] Baklanova, Viktoria, Cecilia Caglio, Marco Cipriani, and Adam Copeland. ''The U.S. Bilateral Repo Market: Lessons from a New Survey.'' Brief no. 16–01, Washington, DC: Office of Financial Research, January 13, 2016. *https://www.financialresearch.gov/briefs/files/OFRbr-2016-01_US-Bilateral-Repo-Market-Lessons-from-Survey.pdf.*

4. How would reporting repo transactions also reported to foreign supervisory authorities affect the reporting burden for covered reporters?

5. How would reporting repurchase agreements denominated in currencies other than dollars affect the reporting burden for covered reporters?

c. Information Required

This proposed collection would require reporting on non-centrally cleared bilateral repo trades, including detailed reporting about the securities used to collateralize these trades and contractual specifics of repurchase agreements. The required data elements are listed in the table in § 1610.11(c) of the proposed regulatory text. This table is tailored to capture information regarding covered transactions in a manner that the Office believes largely reflects the data generated by covered reporters in the ordinary course of business. This table lists each required element and a brief description of that element. Below is a description of the general categories of information covered by the proposed collection and further detail on certain key data fields, including financial data standards and identifiers. The definitions of these data elements are based on the Office's research and experience in both the 2015 and 2022 pilots and, as described in detail in the subsections below, have been adapted to the Office's purposes for financial stability monitoring in the repo market. Proposed required information is also intended to promote the use of financial data standards, in line with the Office's mandate under the Dodd-Frank Act to collect and standardize data to support the Council in identifying risks to U.S. financial stability.

ISO 20022

As an alternative to data element definitions developed by the Office through direct consultation with market participants, the Office is considering adopting the field definitions used in the repo reporting messages in ISO 20022.[60] Promoting these data standards has advantages in terms of providing for greater consistency with other potential collections in the future and with potential developments in market practices. However, the Office believes that in their current form, use of the relevant ISO 20022 definitions would not result in reported data that is fit for the Office's financial stability monitoring purposes. In some cases, this is because the current ISO 20022 field definitions are too broad. In other cases, the ISO 20022 field definitions focus only on information associated with the transaction at the time of the trade, whereas the Office needs information on transaction characteristics since inception (*e.g.,* outstanding commitments). Reporting of outstanding commitments is essential to the Office's focus on financial stability, since it allows the Office to establish a full picture of the current leverage of covered reporters and their counterparties. To that end, the Office is proposing field definitions in the table in § 1610.11(c) of the proposed regulatory text.[61]

The Office is seeking comment on the extent to which the ISO 20022 standard is already used in the repo market, especially with respect to those entities that would be required to report under the proposed rule, and the potential utility of aligning the required data submissions to the standard.

Questions

1. To what extent are financial companies already assigning and using ISO 20022 standards in repo market transactions?

2. Are there advantages to be gained in the Office's ability to monitor the repo market for purposes of financial stability analysis by aligning the proposed data elements and definitions with the ISO 20022 standards?

3. Are there other voluntary consensus standards the Office should consider to enhance its ability to monitor the repo market for purposes of financial stability analysis?

4. How might the Office use this rule to improve data standards in the non-centrally cleared bilateral repo market?

Legal Entity Identifier Usage

Authorities from around the world, including those in the U.S., have established a global legal entity identifier (LEI) system, with oversight effected by a Regulatory Oversight Committee, composed of those same authorities. A Swiss nonprofit foundation, the Global LEI Foundation, was established to provide operational governance and management of local operating units that issue LEIs.

The LEI is a 20-character identifier standard, established as ISO 17442, that identifies distinct legal entities engaging in financial transactions. An LEI allows for unambiguous identification of firms and affiliates.

In both the 2015 pilot and the 2022 pilot, the Office experienced difficulties working with the non-centrally cleared bilateral repo market data due to the absence of standardized counterparty information. Identification of the entities involved in a covered repo transaction is important to enhance the ability of the Council and the Office to identify risks to U.S. financial stability by allowing it to understand repo market participants' exposures, concentrations, and network structures.

This proposed collection includes fields for submitting the LEI of each covered reporter and counterparty involved in a covered transaction. Collecting the LEIs of these entities would facilitate evaluation of the covered transactions and reduce the need for manual intervention in matching identical participants that supply different naming conventions depending on the reporting, and help identifying parent and affiliate relationships. Finally, collecting the LEI would allow the Office to form consistent mappings from the data collected under this rulemaking to other existing data sets such as data collected under the Office's centrally cleared data collection.

The Office's proposed rule would require covered reporters to submit their LEI for each transaction. The proposed rule would also require covered reporters to submit the counterparty's LEI for each transaction, if available. The Office believes that all covered reporters are likely to already possess valid LEIs.

LEIs must be properly maintained, meaning they must be kept current and up to date according to the standards implemented by the Global LEI Foundation. The proposed inclusion of the LEI as a mandatory data field for such purposes, according to the defined standard, was widely supported for the centrally cleared repo collection and continues to be the globally accepted standard for legal entity identification.

Requiring the reporting of LEIs is consistent with the Office's statutory purposes and duties of collecting data on behalf of the Council, providing such data to the Council and member agencies, and standardizing the types and formats of data reported and collected.

Mandatory reporting of the LEI would also benefit firms and regulators by improving the ability to combine repo information with other information necessary to monitor system or firm risk. This is particularly so given that more than 2 million firms have obtained an LEI and are therefore becoming capable of obtaining these benefits. The

[60] The business component and its elements are described under Repurchase Agreement in the ISO 20022 universal financial industry message schema at *https://www.iso20022.org/standardsrepository/type/RepurchaseAgreement.*

[61] *https://www.iso20022.org/standardsrepository/type/RepurchaseAgreement.*

aggregate cost savings for the financial service industry upon broader adoption of the LEI have been estimated in the hundreds of millions of dollars.[62]

Questions

1. Do participants in non-centrally cleared bilateral repo markets anticipate challenges obtaining, maintaining, and reporting LEIs?

Unique Transaction Identifier Usage

The Unique Transaction Identifier (UTI) is a globally unique identifier for individual transactions in financial markets. Beginning in 2014, regulators and other stakeholders across major financial jurisdictions, including the Office, worked to harmonize transaction reporting standards to be available for use across all financial transactions, including repo transactions. The output of this work was the UTI, ISO 23897, which was published in 2020 and allocates a unique number to a financial transaction as agreed among the parties and/or within the regulatory system under which it is formed. Since the UTI's publication as an ISO standard in 2020, adoption has steadily increased, including in new U.S. rulemaking.[63] Looking forward, UTI adoption across financial market sectors could allow for wider systemic risk monitoring.

Adoption of the UTI as a reported element in this collection could improve data quality by reducing the need for manual intervention in matching identical transactions across counterparties, allowing the Office to more effectively monitor and evaluate financial risk. The Office has seen adoption of UTIs in data submitted under its 2022 non-centrally cleared bilateral repo collection pilot. The Office believes that requiring UTIs to be reported, whenever available, will promote UTI use over the long term, conferring the anticipated benefits to data quality, monitoring, and evaluation described above, without imposing reporting costs on those market participants that do not currently assign UTIs to their transactions. The Office's proposed rule therefore requires covered reporters to submit UTIs for each reported transaction, whenever a UTI exists. UTIs should only be reported for new transactions covered under this proposed rule.

Questions

1. Do participants in the non-centrally cleared bilateral repo market anticipate challenges assigning, recording, and sharing UTIs on a transaction-level basis, including increased costs? If so, please provide estimates of those costs.

2. Should the Office set construction criteria for the generation of UTIs or is there sufficient existing market practice guidance for expansion to the non-centrally cleared bilateral repo market?

Collateral Information

The collateral underlying a repurchase agreement is crucial to assessing the exposures and risk management in the repo market. Information on which securities are delivered into repo would allow the Office to track common risk exposures across counterparties. The fields proposed would also allow the Office to assess the extent to which specific securities are tied to the repo market, and therefore potential spillovers from the repo market into underlying asset markets, with potential effects on liquidity and price efficiency.

Further details on valuation and quantities delivered would provide the Office with information on margining practices. Knowing the quantity of securities delivered would help determine levels of over-collateralization in the market and the flow of securities as firms engage in security transformation and acquire specific securities for delivery or sale. The initial haircut and securities value at inception of a trade gives further information on the initial over-collateralization of trades. Knowing the value of the securities as of the file observation date allows for computation of details on current margins maintained by the firm. Finally, knowing the currency these values are reported in allows for comparison across trades and allows the Office to assess potential cross-border exposures through non-centrally cleared bilateral repo. The Office proposes that these values be reported in the currency of issuance of the underlying security, since this value corresponds to the underlying price market participants are likely to reference in their regular course of business. However, there could be advantages in reporting securities values in the same currency as used to denominate the start and end leg cash of the repurchase agreement, since it may align with margining practices.

Questions

1. Should the Office mandate reporting securities value in the currency of issuance of the collateral or in the currency of the repurchase agreement?

2. How are variation margin payments against non-centrally cleared bilateral repurchase agreements determined? How do they regard offsetting conventions and put in place netting practices? How may these conventions and practices be reported in this collection?

Date and Tenor Information

This proposed collection would require information on the start and end dates of transactions; the date and time that each transaction was agreed to; and whether a trade has optionality. It would also require a number of proposed fields regarding date and tenor information. The trade timestamp is the date and time on which a transaction was agreed to. This field is critical for differentiating same-day-start trades from forward-settling trades. Information from this field is also essential to understanding how a transaction is priced, and for determining whether intra-day liquidity is scarce in the market. Intra-day liquidity management has been linked to broader lack of liquidity in September 2019 and March 2020.[64]

Additionally, the proposed collection would define the start date as the date on which a settlement obligation related to the exchange of cash and securities for a transaction first exists. The end date refers to the date on which the cash lenders to the transaction are obliged to return the cash and securities. For trades with optionality, the Office seeks to collect information on the minimum maturity of the trade, or first date in which either party has the option to terminate a trade, such as the call date for a callable trade or the next day for a daily open trade. For trades with optionality the end date would represent the date at which the trade would terminate if no option were exercised and would be left blank for open trades which have no prespecified end date.

For repos with optionality, the optionality field indicates how the maturity of a transaction can be changed after initial agreement. This information is important for determining the pricing of repurchase agreements, since repo rates often depend on the options offered in the agreement. Therefore, without data on optionality, comparisons may be made between two

[62] Office of Financial Research. Legal Entity Identifier—Frequently Asked Questions. *https://www.financialresearch.gov/data/legal-entity-identifier-faqs/.*

[63] *https://www.sec.gov/rules/other/2021/ddr/exhibit-n-technical-specifications-narrative.pdf;* and *https://www.cftc.gov/LawRegulation/FederalRegister/finalrules/2020-21569.html.*

[64] Copeland, Adam, Darrell Duffie, and Yilin Yang. ''Reserves Were Not So Ample After All.'' Working Paper no. 29090, Cambridge, Massachusetts: National Bureau of Economic Research, 2021.

transactions with fundamentally different pricing, leading to erroneous inferences by regulators.

Questions

1. Would there be any advantages to reporting end date and minimum maturity separately? Would the inclusion of this additional field impose significant costs on covered reporters?

2. Are there alternative definitions of trading timestamps that would better capture the economics of the trade or correspond to industry practice?

Trade Direction, Trade Size, and Rate

The proposed rule would involve reporting of the cash borrower and the cash lender, and indicate whether the covered reporter is either of those. The reported fields would indicate whether the trade is guaranteed by the covered reporter. Additionally, the fields would indicate the amounts of cash lent and borrowed by the cash lender and cash borrower, respectively. This information is critical for determining the net exposures of covered reporters to individual securities as well as their overall cash position.

The proposed table would also include two fields on the exchange of cash in these repo transactions. Information would be required on the amount of cash exchanged by the cash borrowers and lenders at the initiation and close of the trade. Where trades do not have a defined close date, the proposed rule would require that the amount that would be due at the first opportunity that either counterparty has the option to end the trade be reported as the close leg amount. In addition, the current cash amount field tracks the current amount of cash in the trade after any adjustments to principal and the accrual of interest, which allows researchers to assess the balance outstanding on open trades for which the start leg may no longer be relevant.

The table would also require information on the agreed-upon rate for the trade, which is the interest rate at which the cash provider agrees to lend to the securities provider. This rate must be expressed as the annualized rate based on an actual/360-day count. Since some term trades in non-centrally cleared bilateral repo are based on floating rates, additional information is required for these trades. This information includes the underlying benchmark interest rate used for the trade, the spread used above this benchmark rate, and the reset frequency of the benchmark. These fields give necessary detail on how the trade has been priced, and on the reliance of repo trades on specific benchmarks, which could lead to spillovers from the markets used to calculate benchmarks into the repo market.

Risk Management

The proposed rule would require information on a covered reporter's netting practices. This field would indicate whether the covered reporter when acting as cash lender or cash borrower offsets, or nets, repo exposures with the same counterparty across asset classes and instrument types not restricted to the non-centrally cleared bilateral repo market. Alternately, when netting occurs within the non-centrally cleared bilateral repo market, the field would indicate the repo terms on which netting occurs. These terms can include a variety of terms including, but not limited to, repo maturity, collateral security, counterparty, and optionality. Regarding these netting practices, the field would indicate whether netting occurs across asset classes and instruments outside of the non-centrally cleared bilateral repo market, or at a transactional level within this market and when so, on what repo terms.

Trade Venue

Finally, for trades which are placed through electronic trading platforms, the proposed collection would require the name of the platform used. This field allows the Office to capture information on material service providers in the repo market. It also allows the Office to assess the extent to which electronic platforms have been adopted, since these platforms potentially allow for greater price transparency and may lead to more flexibility in counterparty relationships in the event of a crisis.

Questions

1. Are the proposed reporting fields generally appropriate? Do any particular proposed reporting fields raise specific questions or concerns?

2. Are there any additional fields not currently being requested that the Office should consider including in order to better accomplish the Office's or Council's goals presented in this proposal?

3. Are the definitions in the proposed regulatory text clear, or should any definitions be modified or added?

d. Submission Process and Implementation

The Office is currently reviewing options for the submission process and implementation of the collection and, if the proposed rule is adopted, may require submission either through the Office or through a collection agent.

The Office proposes to require submissions no later than 11:00 a.m. on the business day following the transaction. The proposed submission process would allow for the secure, automated transmission of files. The Office expects that, if the proposal is adopted, the final rule would go into effect 60 days after its publication in the **Federal Register** and is proposing that covered reporters begin to comply with the final rule 90 days after its effective date. The Office believes this implementation period would provide adequate time for covered reporters to comply with the proposed requirements.

Questions

1. Does the proposed 90-day compliance period for a financial company that is a covered reporter on the effective date of the rule provide sufficient time to comply with the data reporting requirements?

2. Are there any additional costs associated with data reporting as contemplated by this proposed collection? If so, please provide estimates of those costs.

3. Would increasing the time period between the effective date of a final rule and the subsequent compliance date substantially reduce burdens for covered reporters or repo market participants, or improve the quality of the data reported under this proposed collection? Are there any aspects of the proposed collection that a phased-in reporting requirement would be particularly useful for?

4. What, if any, difficulties could a non-centrally cleared bilateral repo collection pose for placing non-centrally cleared bilateral repo transactions? What, if any, consequences would this collection have for repo market volumes or rates?

VI. Administrative Law Matters

a. Paperwork Reduction Act

The collection of information contained in this proposed collection has been submitted to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (PRA).[65] Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury/Office of Financial Research, Office of Information and Regulatory Affairs, Washington, DC 20503 (or by email to *oirasubmission@omb.eop.gov*), with copies to the Office of Financial

[65] 44 U.S.C. 3501, *et seq.*

Research at 717 14th Street NW, Washington, DC 20220.

The proposal would establish the permanent collection of certain information on repo transactions and is a ''collection of information'' pursuant to the PRA. The Office is an independent regulatory agency under the PRA [66] and for purposes of OMB review. In accordance with the requirements of the PRA, the Office may not conduct or sponsor, and a covered reporter is not required to respond to, an information collection unless it displays a currently valid OMB control number.

The Office anticipates that this proposed collection would require submission by 40 covered reporters, who would be required to submit data daily in accordance with the table in the proposed regulatory text. The Office anticipates an annual burden of 756 hours per covered reporter. This figure is arrived at by estimating the daily reporting time to be approximately 3 hours for submission and multiplying that figure by an average of 252 business days in a year, the typical number of days per year that do not fall either on weekends or on holidays widely observed by the market.

To estimate hourly wages, the Office used data from the May 2021 Bureau of Labor Statistics Occupational Employment Statistics for credit intermediation and related activities (North American Industry Classification System (NAICS) 522000). For hourly compensation, a figure of $84 per hour was used, which is an average of the 90th percentile wages in seven different categories of employment (compliance officers, accountants and auditors, lawyers, management occupations, financial analysts, software developers, and statisticians), plus an additional 50.4% to cover subsequent wage gains and non-wage benefits, which yields an estimate of $126 per hour. Each covered reporter must also obtain and maintain an LEI, which typically costs $65, and then $50 annually. Using these assumptions, the Office estimates the recurring operational costs for the submissions under this proposed collection to be $95,306 annually for each covered reporter and the total estimated annual costs for all expected covered reporters is $3,812,240.

The Office also estimates that approximately 2,000 financial firms would need to determine whether they are covered reporters on a quarterly basis. The Office estimates this would take 3 hours per quarter. The total estimated annual cost for these 2,000 financial firms is $3,024,000. Combining the costs of the 40 covered reporters and the 2,000 financial firms, the total recurring annual cost of the data collection is estimated at $6,836,240.

Office Estimates Summary

Title: Ongoing Data Collection of Non-Centrally Cleared Bilateral Transactions in the U.S. Repurchase Agreement Market.

Office: Office of Financial Research.

Frequency of Response: Daily (12 CFR 1610.11(d)).

Affected Public: Businesses or other for-profit.

Scope of Covered Reporters: Any party to a non-centrally cleared bilateral repurchase agreement transaction that meets the definition of financial company set forth in 12 U.S.C. 5341(2) and is: (i) A Securities Broker, securities dealer, government securities broker, or government securities dealer, each as defined under and registered pursuant to the Securities Exchange Act of 1934 whose average daily total outstanding commitments to borrow in non-centrally cleared bilateral repurchase agreement transaction (prior to netting) with all counterparties over all business days during the prior calendar quarter is at least $10 billion; or (ii) any other entity whose assets or assets under management are over $1 billion and whose average daily outstanding commitments to borrow in non-centrally cleared bilateral repurchase agreement transactions with counterparties that are not included in (i) over all business days during the prior calendar quarter is at least $10 billion. (12 CFR 1610.11(a), (b)(2)).

Number of Covered Reporters: 40 covered reporters.

Estimated Time per Covered Reporter per Submission: 3 hours.

Number of Submissions: Daily submission (12 CFR 1610.11(c)(3)).

Anticipated Annual Submissions: 252.

Total Estimated Annual Burden: 756 hours.

In addition to recurring reporting costs, the Office anticipates covered reporters would experience one-time initial start-up costs to account for data management systems and software, operations, and alignment of reporting schedules for ease of data transmission. The estimate of these initial costs is approximately 500 hours per covered reporter. Because the Office anticipates 40 covered reporters the estimated initial start-up cost of all required reporting is $2,520,000.

The Office invites comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the Office, including whether the information would have practical utility; (b) the accuracy of the estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the required collection of information, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to report the information.

b. Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (the ''RFA'') to address concerns related to the effects of agency rules on small entities.[67] The Office is sensitive to the impact its rules may impose on small entities. The RFA requires agencies either to provide an initial regulatory flexibility analysis with a proposed rule for which general notice of proposed rulemaking is required, or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.[68] In accordance with section 3(a) of the RFA, the Office is certifying that this proposed collection will not have a significant economic impact on a substantial number of small entities.

As discussed above, this proposed collection would only apply to certain brokers and dealers whose average daily borrowing in non-centrally cleared bilateral repo contracts over the prior calendar quarter is at least $10 billion and to other financial companies with over $1 billion in assets or assets under management and greater than $10 billion whose average daily borrowing in non-centrally cleared bilateral repo contracts over the prior calendar quarter from counterparties who are also non-securities broker, non-securities dealers, non-government securities brokers, or non-Government securities dealers is at least $10 billion.

Under regulations issued by the Small Business Administration, a ''small entity'' includes those firms within the ''Finance and Insurance'' sector with asset sizes that vary from $7.5 million in assets to $750 million or less in assets.[69] For purposes of the RFA, entities that are banks are considered small entities if their assets are less than or equal to $750 million. The size of the exposure-based threshold in this

[66] 44 U.S.C. 3502(5).

[67] 5 U.S.C. 601 *et seq.*

[68] 5 U.S.C. 603(a).

[69] 13 CFR 121.201.

proposed collection ensures that any respondent will be well beyond these small entity definitions.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is hereby certified that this proposed collection will not have a significant economic impact on a substantial number of small entities.

c. Plain Language

The Office has sought to present this proposed collection in a simple and straightforward manner. The Office invites comments on how to make this proposal, the regulatory text, or the reporting schedules easier to understand. The Office specifically invites comments on the following questions:

Questions

1. Are the requirements in the proposal clearly stated? If not, how could the proposed rule be more clearly stated?

2. Does the proposed rule contain language or jargon that is not clear? If so, which language requires clarification?

3. Would a different format (*e.g.,* groupings, ordering of sections, use of headings, paragraphing) make the proposed rule easier to understand? If so, what changes to the format would make the proposed rule easier to understand?

List of Subjects in 12 CFR Part 1610

Clearing, Confidential business information, Data collection, Economic statistics, No central counterparty, Reference rates, Repurchase agreements, No central counterparty.

For the reasons stated in the preamble, the Office of Financial Research proposes to amend 12 CFR part 1610 as set forth below:

PART 1610—REGULATORY DATA COLLECTIONS

■ 1. The authority citation for part 1610 continues to read as follows:

Authority: 12 U.S.C. 5343 and 5344.

■ 2. Add § 1610.11 to read as follows:

§ 1610.11 Non-centrally cleared Bilateral Repurchase Agreement Data.

(a) *Definitions.* The following definitions are applicable in this section:

Covered reporter means any financial company that meets the criteria set forth in paragraph (b)(2) of this section; provided, however, that any covered reporter shall cease to be a covered reporter only if it does not meet the dollar thresholds specified in paragraph (b)(2) of this section for at least four consecutive calendar quarters.

Financial company has the same meaning as in 12 U.S.C. 5341(2).

Government securities broker means any institution registered as a government securities broker with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

Government securities dealer means any institution registered as a government securities dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

Investment adviser means any institution registered as an investment adviser with the Securities and Exchange Commission under the Investment Advisers Act of 1940.

Non-centrally cleared bilateral repurchase agreement transaction means an agreement of one party to sell securities to a second party in exchange for the receipt of cash, and the simultaneous agreement of the former party to later reacquire the same securities (or any subsequently substituted securities) from that same second party in exchange for the payment of cash; or an agreement of a party to acquire securities from a second party in exchange for the payment of cash, and the simultaneous agreement of the former party to later transfer back the same securities (or any subsequently substituted securities) to the latter party in exchange for the receipt of cash. The agreement does not involve a tri-party custodian and is not cleared with a central counterparty. This definition includes, but is not limited to, transactions that are executed under a Master Repurchase Agreement (MRA) or Global Master Repurchase Agreement (GMRA), or which are agreed to by the parties as subject to the provisions of 11 U.S.C. 559. Notwithstanding the above, transactions conducted under a Securities Lending Agreement (SLA) or a Master Securities Lending Agreement (MSLA) are not considered repurchase agreements, nor are repurchase agreements arising from either participation in a commercial mortgage loan or the initial securitization of a residential mortgage loan.

Outstanding commitment: The amount of financial obligations entered into pursuant to any repurchase agreement which opens on, or is outstanding as of, the file observation date, including transactions which both opened and closed on the file observation date. These financial obligations include all of those that exist prior to netting.

Securities broker means any institution registered as a broker with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

Securities dealer means any institution registered as a dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

(b) *Purpose and Scope*—(1) *Purpose.* The purpose of this data collection is to require the reporting of certain information to the Office about non-centrally cleared bilateral repurchase agreement transactions. The information will be used by the Office to fulfill its responsibilities under title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act, including support of the Council and Council member agencies by facilitating financial stability monitoring and research consistent with support of the Council and its member agencies.

(2) *Scope of Application.* Reporting under this section is required by any financial company that is party to a non-centrally cleared bilateral repurchase agreement transaction that is:

(i) A Securities Broker, securities dealer, government securities broker, or government securities dealer whose average daily outstanding commitments to borrow and extend guarantees in non-centrally cleared bilateral repurchase agreement transactions with counterparties over all business days during the prior calendar quarter is at least $10 billion; and

(ii) Any other financial company with over $1 billion in assets or assets under management whose average daily outstanding commitments to borrow and extend guarantees in non-centrally cleared bilateral repurchase agreement transactions, including commitments of all funds for which the company serves as an investment adviser, with counterparties that are not securities broker, securities dealers, government securities brokers, or government securities dealers over all business days during the prior calendar quarter is at least $10 billion.

(c) *Data Required.* (1) Covered reporters shall report trade and collateral information on all non-centrally cleared bilateral repurchase agreement transactions, subject to paragraph (c)(2) of this section, in accordance with the prescribed reporting format in this section.

(2) Covered reporters shall only report trade and collateral information with respect to any non-centrally cleared bilateral repurchase agreement transaction which opens on, or is outstanding as of, the file observation

date, including transactions which both opened and closed on the file observation date.

(3) Covered reporters shall submit the following data elements for all transactions:

TABLE 1 TO PARAGRAPH (c)(3)

Data element	Explanation
(1) File observation date	The observation date of the file.
(2) Covered reporter LEI	The Legal Entity Identifier of the covered reporter.
(3) Cash lender LEI	The Legal Entity Identifier of the cash lender.
(4) Cash lender name	The legal name of the cash lender.
(5) Cash borrower name	The legal name of the cash borrower.
(6) Cash borrower LEI	The Legal Entity Identifier of the cash borrower.
(7) Guarantee	Indicator for whether the covered reporter issued a guarantee with respect to the transaction.
(8) Netting set	A descriptor to indicate for the transaction whether the covered reporter nets counterparty exposures across asset classes and instruments outside of repurchase agreements. When the covered reporter does not net counterparty exposures across asset classes and instruments outside of repurchase agreements, the descriptor indicates the repurchase agreement terms on which netting occurs.
(9) Transaction id	The respondent-generated unique transaction identifier in an alphanumeric string format.
(10) Unique transaction ID	If available, the Unique Transaction ID (UTI).
(11) Trading platform	For transactions arranged using an outside vendor's platform, the provider of the platform.
(12) Trade timestamp	The timestamp that the trade became an obligation of the covered reporter or the covered reporter's subsidiary.
(13) Start date	The start date of the repo.
(14) End date	The date the repo matures.
(15) Minimum maturity date	The earliest possible date on which the transaction could end in accordance with its contractual terms (taking into account optionality).
(16) Cash lender internal identifier	The internal identifier assigned to the cash lender by the covered reporter, if the covered reporter is not the cash lender.
(17) Cash borrower internal identifier	The internal identifier assigned to the cash borrower by the covered reporter, if the covered reporter is not the cash borrower.
(18) Start leg amount	The amount of cash transferred to the cash borrower on the open leg of the transaction at inception of the repurchase.
(19) Close leg amount	The amount of cash to be transferred by the cash borrower on the end date of the transaction.
(20) Current cash amount	The amount of cash to be transferred by the cash borrower, inclusive of accrued interest and principal as of the file observation date.
(21) Start leg currency	The currency which is used in the ''start leg'' field.
(22) Rate	The rate of interest paid by the cash borrower on the transaction, expressed as an annual percentage rate on an actual/360-day basis.
(23) Floating rate	The benchmark interest rate upon which the transaction is based.
(24) Floating rate reset frequency	The time period, in calendar days, describing the frequency of the floating rate resets.
(25) Spread	The contractual spread over the benchmark rate referenced in the repurchase agreement.
(26) Securities identifier type	The identifier type for the securities transferred between cash borrower and cash lender.
(27) Security identifier	The identifier of securities transferred between the cash borrower and the cash lender in the repo.
(28) Securities quantity	For fixed-income instruments, the par amount of the transferred securities as of the report date.
(29) Securities value	The market value of the transferred securities as of the close of business on the file observation date, inclusive of accrued interest.
(30) Securities value at inception	The market value of the transferred securities at the inception of the transaction, inclusive of accrued interest.
(31) Securities value currency	The currency which is used in the ''securities value'' and ''securities value at inception'' fields.
(32) Haircut	The difference between the market value of the transferred securities and the purchase price paid at the inception of the transaction.
(33) Special instructions notes or comments	The covered reporter may characterize any collateral with special instructions notes or comments.

(d) *Reporting Process.* The Office may either collect the data itself or designate a collection agent for that purpose. Covered reporters shall submit the required data for each business day by 11 a.m. Eastern time on the following business day.

(e) *Compliance Date.* (1) Any financial company that is a covered reporter as of the effective date of this section shall comply with the reporting requirements pursuant to this section 90 days after the effective date of this section. Any such covered reporter's first submission shall be submitted on the first business day after such compliance date.

(2) Any financial company that becomes a covered reporter after the effective date of this section shall comply with the reporting requirements pursuant to this section on the first business day of the third full calendar quarter following the calendar quarter in which such financial company becomes a covered reporter.

James D. Martin,

Deputy Director for Operations Performing the Duties of the OFR Director.

[FR Doc. 2022–28615 Filed 1–6–23; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 6, 8, 10, and 11

[Docket No. TTB–2022–0011; Notice No. 216A; Re: Notice No. 216]

RIN 1513–AC92

Consideration of Updates to Trade Practice Regulations

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is extending for an additional 90 days the comment period for an advance notice of proposed rulemaking it published on November 9, 2022, entitled, ''Consideration of Updates to Trade Practice Regulations.'' TTB is taking this action in response to a joint request made by eight alcohol industry trade associations.

DATES: For the advance notice of proposed rulemaking published as Notice No. 216 on November 9, 2022, at 87 FR 67612, comments are now due on or before June 7, 2023.

ADDRESSES: You may electronically submit comments on the advance notice of proposed rulemaking and view copies of that notice, this comment period extension notice, and any comments TTB receives within Docket No. TTB–2022–0011 as posted on the *Regulations.gov* website at *https://www.regulations.gov.* A link to that docket is available on the TTB website at *https://www.ttb.gov/laws-and-regulations/all-rulemaking* under Notice No. 216. Alternatively, you may submit comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005. Please see the Public Participation section of Notice No. 216 for information on the specific issues and questions on which TTB is soliciting comments, and for information on the submission, confidentiality, and public disclosure of comments.

FOR FURTHER INFORMATION CONTACT: Christopher Forster-Smith, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; telephone 202–453–1039 ext. 150.

SUPPLEMENTARY INFORMATION: Through a recently-published advance notice of proposed rulemaking (ANPRM), the Alcohol and Tobacco Tax and Trade Bureau (TTB) solicited comments on its trade practice regulations related to the Federal Alcohol Administration Act's tied house, exclusive outlet, commercial bribery, and consignment sales prohibitions, which are contained in 27 CFR parts 6, 8, 10, and 11, respectively. TTB published that ANPRM as Notice No. 216, ''Consideration of Updates to Trade Practice Regulations,'' in the **Federal Register** on November 9, 2022, at 87 FR 67612. TTB solicited comments on specific issues and questions set out in the ANPRM and also invited comments on any other issue or concern related to its trade practice regulations.

As originally published, the comment period closing date for the ANPRM was March 9, 2023.

TTB recently received a joint request from eight alcohol industry trade associations to extend the comment period for the ANPRM for an additional 90 days; see Comment 21 as posted in Docket TTB–2022–0011 on the ''*Regulations.gov*'' website at *https://www.regulations.gov.* The eight associations supporting the request are the Wine Institute, the Distilled Spirits Council of the United States (DISCUS), WineAmerica, the American Distilled Spirits Alliance (ADSA), the Wine and Spirits Wholesalers of America (WSWA), American Beverage Licensees (ABL), the Beer Institute, and the National Beer Wholesalers Association (NBWA).

The eight associations cite the changes to the beverage alcohol industry since the trade practice regulations were last revised, the differential affect changes to the regulations may have on small, mid-size, and large producers, the broad scope of the ANPRM, and the on-going holiday season as the reasons they are requesting an extension to the ANPRM's comment period for an additional 90 days.

In response to that request, TTB is extending the comment period for Notice No. 216 for an additional 90 days. TTB believes that the 90-day extension of the comment period, in addition to the original 120-day comment period, will be of sufficient length to allow interested parties to consider and comment on the issues raised in the ANPRM, while allowing TTB to then proceed with a notice of proposed rulemaking and ultimately conclude the rulemaking in a timely manner.

Therefore, TTB will now accept public comments on Notice No. 216 through June 7, 2023. See the ANPRM, Notice No. 216, for complete information on the specific issues and questions on which TTB is seeking comment, as well as information on how to submit comments electronically or by postal mail, and on the confidentiality and public disclosure of any submitted comments.

Mary G. Ryan,

Administrator.

[FR Doc. 2023–00111 Filed 1–6–23; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

RIN 0648–BK09

Fisheries Off West Coast States; Highly Migratory Fisheries; Amendment 6 to Fishery Management Plan for West Coast Highly Migratory Species Fisheries; Authorization of Deep-Set Buoy Gear

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 6 to the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP) for review by the Secretary of Commerce. The intent of Amendment 6 is to authorize deep-set buoy gear (DSBG) as a legal gear type for targeting highly migratory species (HMS) off the U.S. West Coast, and to establish management measures, a permitting program, and a standardized bycatch reporting methodology (SBRM) for this fishery. The amendment is expected to affect harvest levels of swordfish by authorizing an additional gear type for commercial harvest of HMS in Federal waters off the U.S. West Coast. The Council transmitted the draft Amendment to NMFS on December 21, 2022.

DATES: Comments on Amendment 6 must be received by March 10, 2023 to be considered in the decision whether to approve, disapprove, or partially approve Amendment 6.

ADDRESSES: You may submit comments on this document, identified by NOAA–

NMFS–2022–0141, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to *WCR.HMS@noaa.gov.*

Instructions: Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of the draft Amendment 6 and other supporting documents are available via the Federal eRulemaking Portal: *https://www.regulations.gov,* docket NOAA–NMFS–2022–0141, or contact the Acting Regional Administrator, Scott M. Rumsey, NMFS West Coast Region, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232–1274, or *WCR.HMS@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Amber Rhodes, NMFS, (202) 936–6162, *Amber.Rhodes@noaa.gov* or Rachael Wadsworth, NMFS, (206) 526–6152, *Rachael.Wadsworth@noaa.gov.*

SUPPLEMENTARY INFORMATION: DSBG was initially developed off the U.S. West Coast through a series of research trials which began in 2011 and continued under exempted fishing permits (EFPs) beginning in 2015. The information collected indicated that DSBG was an effective gear type for selectively targeting swordfish with minimal bycatch and that the gear was potentially profitable to fishermen. These promising results led the Council to recommend that NMFS authorize DSBG as a legal gear type for targeting HMS in the U.S. West Coast Exclusive Economic Zone (EEZ) off California and Oregon.

The Council developed this draft amendment over a series of public meetings. The process began with the adoption of a range of alternatives (ROA) for federally authorized DSBG fishing in June of 2018. Later, in November 2018, the Council refined its ROA and adopted a preliminary preferred alternative (PPA) to authorize DSBG off the coasts of California and Washington, with a limited entry (LE) permitting system for use of the gear within the Southern California Bight (SCB). In September 2019, the Council adopted its final preferred alternative (FPA) after making a few minor clarifications to its PPA, including amending the tiered criteria of swordfish fishing experience necessary to qualify for an LE permit. At its March 2021 Meeting, the Council modified its FPA to clarify terms, such as ''EFP holders,'' in the recommended tiered criteria, and specified data sources for qualifying LE permit applicants under those tiers. The Council also provided additional input on the permit qualification procedures (*i.e.,* a one-time ranking of permit qualifiers according to tiers), and clarified its intent to issue permits to entities, including corporations, while prohibiting permit transfers through changes in entity ownership. During its November 2021 meeting, the Council adopted a standardized bycatch reporting methodology for an authorized DSBG fishery. Finally, during its March 2022 meeting, the Council considered additional measures for an authorized DSBG fishery related to compliance with the Endangered Species Act, and procedures for monitoring and management of the proposed fishery, including LE permit ownership.

The proposed changes to the HMS FMP are described in further detail below.

Section 6.1 would be amended to include the definition of DSBG as a legal gear type. Both ''standard'' and ''linked'' configurations of DSBG are described and would be authorized. Additionally, the section would be amended to clarify that DSBG must be actively tended, in contrast to surface hook and line gear, which does not require active tending.

Section 6.2 would be amended to describe the LE permitting regime for fishing DSBG within the SCB (*i.e.,* Federal waters east of 120°28′18″ W longitude). This includes language outlining the timing and pace of permit issuance, tiered qualifying criteria (including definitions for permit holders and vessel owners), procedures for permit renewals, and restrictions on permit transfers. Up to 50 permits would be issued for the first year, and up to 25 additional permits would be issued annually in subsequent years until a maximum of 300 permits are issued. The draft amendment also describes scenarios in which the Council or NMFS may determine that a fewer number of permits should be issued than 300. In such a scenario, the Council could recommend NMFS publish new regulations restricting permit issuance based on applicable law or other considerations. Finally, Section 6.2.1.1 describes the tiered criteria that NMFS will use to issue permits to potential DSBG fishermen based on industry participation history and swordfish fishing experience.

Section 6.3 would be amended to include DSBG-specific language related to standardized bycatch reporting methodology (SBRM). This language includes a synopsis of the gear's documented bycatch performance, and considerations related to logbook reporting and observer coverage in the authorized fishery. DSBG vessels would be subject to logbook reporting requirements in the same manner as other HMS fisheries. As an addendum to this section, Section 8.0 would also be amended to include a reference to the Draft Environmental Impact Statement (DEIS) analyzing the environmental and socioeconomic impacts of DSBG authorization, which NMFS published in August 2021.

The preamble to Section 6.6 would be amended to include DSBG when referring to HMS fishery conservation and management measures. Section 6.6.4 would also be amended to reference pending Federal regulations on the maximum amount of gear deployed, gear tending requirements, timing of gear deployment/retrieval, and simultaneous use of DSBG and other gear types on a single trip.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 3, 2023.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–00053 Filed 1–6–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 106, 204, 212, 214, 240, 244, 245, 245a, 264, and 274a

[CIS No. 2687–21; DHS Docket No. USCIS 2021–0010]

RIN 1615–AC68

U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements; Correction

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On January 4, 2023, the Department of Homeland Security (DHS) published a proposed rule that proposed adjustments to certain immigration and naturalization benefit request fees charged by U.S. Citizenship and Immigration Services (USCIS). While DHS was able to work with the Office of the Federal Register to correct two typographical errors in the public inspection version of the proposed rule that posted on January 3, 2023, the published version of the proposed rule contain the errors in Table 1. In this document, we are correcting those two typographical errors.

DATES: Written comments are due on March 6, 2023. Please refer to the instructions and guidance in the published proposed rule in the **Federal Register** on January 4, 2023, at 88 FR 402, FR Doc. 2022–27066, for more information on how to submit public comment.

FOR FURTHER INFORMATION CONTACT: Carol Cribbs, Deputy Chief Financial Officer, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone 240–721–3000 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 877–889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

Need for Correction

On January 4, 2023, DHS published a proposed rule in the **Federal Register** at 88 FR 402 proposing amendments to certain immigration and naturalization benefit request fees charged by USCIS (FR Doc. 2022–27066). There were two typographical errors in the proposed fees listed in Table 1 that were noticed after the document was scheduled for publication. DHS was able to work with the Office of the Federal Register to correct these typographical errors in the version of the proposed rule that posted for public inspection on January 3, 2023. However, the printing of the January 4, 2023 edition of the **Federal Register** was too far along in production and the errors were not corrected in the official publication. First in Table 1 on page 410, fifth row from the bottom for I–129CW and I–129, Petition for a CNMI Nonimmigrant Worker (with biometric services fee), the proposed fee needs to change from ''$1,055'' to ''$1,015'' in the 4th column, and the difference values need to change from ''$595'' to ''$470'' and from ''129%'' to ''86%'' in the 5th and 6th columns, respectively. Second, in Table 1 on page 411, sixth row from the top for I–765, Application for Employment Authorization—Online (with biometric services), the proposed fee needs to from ''$650'' to ''$555'' in the 4th column, and the difference values need to change from ''$240'' to ''$60'' and ''59%'' to ''12%'' in the 5th and 6th columns, respectively.

Correction of Publication

Accordingly, Table 1 beginning on page 407 of the proposed rule, FR Doc. 2022–27066, published on January 4, 2023, at 88 FR 402, is corrected and republished as follows:

TABLE 1—COMPARISON OF CURRENT [1] AND PROPOSED FEES

Immigration benefit request		Current fee(s)	Proposed fee(s).	Difference	
Citizenship and Naturalization:					
N–4	Monthly Report on Naturalization Papers	No Fee	No Fee	N/A	N/A
N–300	Application to File Declaration of Intention	$270	$320	$50	19%
N–336	Request for Hearing on a Decision in Naturalization Proceedings—Online or Paper.	$700	$830	$130	19%
N–400	Application for Naturalization—Online or Paper	$640	$760	$120	19%
N–400	Application for Naturalization—Online or Paper (with biometric services).	$725	$760	$35	5%
N–400	Application for Naturalization—Reduced Fee	$320	$380	$60	19%
N–400	Application for Naturalization—Reduced Fee (with biometric services).	$405	$380	−$25	−6%
N–470	Application to Preserve Residence for Naturalization Purposes	$355	$425	$70	20%
N–565	Application for Replacement Naturalization/Citizenship Document—Online or Paper.	$555	$555	$0	0%
N–600	Application for Certificate of Citizenship—Online or Paper	$1,170	$1,385	$215	18%
N–600K	Application for Citizenship and Issuance of Certificate—Online or Paper.	$1,170	$1,385	$215	18%
N–644	Application for Posthumous Citizenship	No Fee	No Fee	N/A	N/A
N–648	Medical Certification for Disability Exceptions	No Fee	No Fee	N/A	N/A
Humanitarian:					
	Credible Fear	No Fee	No Fee	N/A	N/A
I–589	Application for Asylum and for Withholding of Removal	No Fee	No Fee	N/A	N/A
I–590	Registration for Classification as a Refugee	No Fee	No Fee	N/A	N/A
I–602	Application by Refugee for Waiver of Inadmissibility Grounds	No Fee	No Fee	N/A	N/A
I–687	Application for Status as a Temporary Resident Under Section 245A of the INA.	$1,130	$1,240	$110	10%
I–687	Application for Status as a Temporary Resident Under Section 245A of the INA (with biometric services).	$1,215	$1,240	$25	2%
I–694	Notice of Appeal of Decision	$890	$1,155	$265	30%
I–698	Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA).	$1,670	$1,670	$0	0%
I–698	Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of the INA) (with biometric services).	$1,755	$1,670	−$85	−5%
I–730	Refugee/Asylee Relative Petition	No Fee	No Fee	N/A	N/A
I–765V	Application for Employment Authorization for Abused Nonimmigrant Spouse.	No Fee	No Fee	N/A	N/A
I–817	Application for Family Unity Benefits	$600	$875	$275	46%
I–817	Application for Family Unity Benefits (with biometric services)	$685	$875	$190	28%
I–821	Application for Temporary Protected Status—Online or Paper	$50	$50	$0	0%

TABLE 1—COMPARISON OF CURRENT [1] AND PROPOSED FEES—Continued

I–881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (for an individual adjudicated by DHS).	$285	$340	$55	19%
I–881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (for an individual adjudicated by DHS) (with biometric services).	$370	$340	−$30	−8%
I–881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (for a family adjudicated by DHS).	$570	$340	−$230	−40%
I–881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (for a family adjudicated by DHS) (with biometric services for two people).	$740	$340	−$400	−54%
I–881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (for a family adjudicated by Executive Office for Immigration Review).	$165	$165	$0	0%
I–914	Application for T Nonimmigrant Status	No Fee	No Fee	N/A	N/A
I–914A	Application for Family Member of T–1 Recipient	No Fee	No Fee	N/A	N/A
I–918	Petition for U Nonimmigrant Status	No Fee	No Fee	N/A	N/A
I–918A	Petition for Qualifying Family Member of U–1 Recipient	No Fee	No Fee	N/A	N/A
I–918B	U Nonimmigrant Status Certification	No Fee	No Fee	N/A	N/A
I–929	Petition for Qualifying Family Member of a U–1 Nonimmigrant	$230	$270	$40	17%
	Reasonable Fear	No Fee	No Fee	N/A	N/A
Family-Based:					
I–129F	Petition for Alien Fiancé(e)	$535	$720	$185	35%
I–130	Petition for Alien Relative—Online	$535	$710	$175	33%
I–130	Petition for Alien Relative—Paper	$535	$820	$285	53%
I–600	Petition to Classify Orphan as an Immediate Relative	$775	$920	$145	19%
I–600	Petition to Classify Orphan as an Immediate Relative (with biometric services for one adult).	$860	$920	$60	7%
I–600A	Application for Advance Processing of an Orphan Petition	$775	$920	$145	19%
I–600A	Application for Advance Processing of an Orphan Petition (with biometric services for one adult).	$860	$920	$60	7%
I–600A/I–600 Supp. 3.	Request for Action on Approved Form I–600A/I–600	N/A	$455	N/A	N/A
I–601A	Application for Provisional Unlawful Presence Waiver	$630	$1,105	$475	75%
I–601A	Application for Provisional Unlawful Presence Waiver (with biometric services).	$715	$1,105	$390	55%
I–751	Petition to Remove Conditions on Residence	$595	$1,195	$600	101%
I–751	Petition to Remove Conditions on Residence (with biometric services).	$680	$1,195	$515	76%
I–800	Petition to Classify Convention Adoptee as an Immediate Relative.	$775	$920	$145	19%
I–800A	Application for Determination of Suitability to Adopt a Child from a Convention Country.	$775	$920	$145	19%
I–800A	Application for Determination of Suitability to Adopt a Child from a Convention Country (with biometric services).	$860	$920	$60	7%
I–800A Supp. 3	Request for Action on Approved Form I–800A	$385	$455	$70	18%
I–800A Supp. 3	Request for Action on Approved Form I–800A (with biometric services).	$470	$455	−$15	−3%
Employment-Based:					
	Asylum Program Fee	N/A	$600	N/A	N/A
	H–1B Pre-Registration Fee	$10	$215	$205	2050%
I–129	Petition for a Nonimmigrant Worker: H–1 Classifications	$460	$780	$320	70%
I–129	H–2A Petition—Named Beneficiaries	$460	$1,090	$630	137%
I–129	H–2B Petition—Named Beneficiaries	$460	$1,080	$620	135%
I–129	Petition for L Nonimmigrant Worker	$460	$1,385	$925	201%
I–129	Petition for O Nonimmigrant Worker	$460	$1,055	$595	129%
I–129CW, and I–129.	Petition for a CNMI-Only Nonimmigrant Transitional Worker; Application for Nonimmigrant Worker: E and TN Classifications; and Petition for Nonimmigrant Worker: H–3, P, Q, or R Classification.	$460	$1,015	$555	121%
I–129CW, and I–129.	Petition for a CNMI Nonimmigrant Worker (with biometric services fee).	$545	$1,015	$470	86%
I–129	H–2A Petition—Unnamed Beneficiaries	$460	$530	$70	15%
I–129	H–2B Petition—Unnamed Beneficiaries	$460	$580	$120	26%
I–140	Immigrant Petition for Alien Worker	$700	$715	$15	2%
I–526	Immigrant Petition by Standalone Investor	$3,675	$11,160	$7,485	204%
I–526E	Immigrant Petition by Regional Center Investor	$3,675	$11,160	$7,485	204%
I–765	Application for Employment Authorization—Online	$410	$555	$145	35%
I–765	Application for Employment Authorization—Paper	$410	$650	$240	59%
I–765	Application for Employment Authorization—Online (with biometric services).	$495	$555	$60	12%
I–765	Application for Employment Authorization—Paper (with biometric services).	$495	$650	$155	31%
I–829	Petition by Investor to Remove Conditions on Permanent Resident Status.	$3,750	$9,525	$5,775	154%
I–829	Petition by Investor to Remove Conditions on Permanent Resident Status (with biometric services).	$3,835	$9,525	$5,690	148%
I–907	Request for Premium Processing Service when filing: Form I–129 requesting E–1, E–2, E–3, H–1B, H–3, L (including blanket L–1), O, P, Q, or TN nonimmigrant classification; or Form I–140 requesting EB–1, EB–2, or EB–3 immigrant visa classification.	$2,500	$2,500	$0	0%

TABLE 1—COMPARISON OF CURRENT [1] AND PROPOSED FEES—Continued

I–907	Request for Premium Processing Service when filing Form I–129 requesting H–2B or R nonimmigrant classification.	$1,500	$1,500	$0	0%
I–956	Application For Regional Center Designation	$17,795	$47,695	$29,900	168%
I–956G	Regional Center Annual Statement	$3,035	$4,470	$1,435	47%
Other:					
I–90	Application to Replace Permanent Resident Card—Online	$455	$455	$0	0%
I–90	Application to Replace Permanent Resident Card—Paper	$455	$465	$10	2%
I–90	Application to Replace Permanent Resident Card—Online (with biometric services).	$540	$455	−$85	−16%
I–90	Application to Replace Permanent Resident Card—Paper (with biometric services).	$540	$465	−$75	−14%
I–102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document.	$445	$680	$235	53%
I–131	Application for Travel Document	$575	$630	$55	10%
I–131	Application for Travel Document (with biometric services)	$660	$630	−$30	−5%
I–131	I–131 Refugee Travel Document for an individual age 16 or older.	$135	$165	$30	22%
I–131	I–131 Refugee Travel Document for an individual age 16 or older (with biometric services).	$220	$165	−$55	−25%
I–131	I–131 Refugee Travel Document for a child under the age of 16	$105	$135	$30	29%
I–131	I–131 Refugee Travel Document for a child under the age of 16 (with biometric services).	$190	$135	−$55	−29%
I–131A	Application for Carrier Documentation	$575	$575	$0	0%
I–191	Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA).	$930	$930	$0	0%
I–192	Application for Advance Permission to Enter as Nonimmigrant (filed with USCIS).	$930	$1,100	$170	18%
I–192	Application for Advance Permission to Enter as Nonimmigrant (filed with CBP).	$585	$1,100	$515	88%
I–193	Application for Waiver of Passport and/or Visa	$585	$695	$110	19%
I–212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal.	$930	$1,395	$465	50%
I–290B	Notice of Appeal or Motion	$675	$800	$125	19%
I–360	Petition for Amerasian Widow(er) or Special Immigrant	$435	$515	$80	18%
I–485	Application to Register Permanent Residence or Adjust Status	$1,140	$1,540	$400	35%
I–485	Application to Register Permanent Residence or Adjust Status (with biometric services).	$1,225	$1,540	$315	26%
I–485	Application to Register Permanent Residence or Adjust Status (under the age of 14 in certain conditions).	$750	$1,540	$790	105%
I–485	Forms I–485 and I–131 with biometric services	$1,225	$2,170	$945	77%
I–485	Forms I–485 and I–765 (filed on paper) with biometric services	$1,225	$2,190	$965	79%
I–485	Forms I–485, I–131, and I–765 (filed on paper) with biometric services.	$1,225	$2,820	$1,595	130%
I–485A	Supplement A, Supplement A to Form I–485, Adjustment of Status Under Section 245(i).	$1,000	$1,000	$0	0%
I–539	Application to Extend/Change Nonimmigrant Status—Online	$370	$525	$155	42%
I–539	Application to Extend/Change Nonimmigrant Status—Paper	$370	$620	$250	68%
I–539	Application to Extend/Change Nonimmigrant Status—Online (with biometric services).	$455	$525	$70	15%
I–539	Application to Extend/Change Nonimmigrant Status—Paper (with biometric services).	$455	$620	$165	36%
I–601	Application for Waiver of Grounds of Inadmissibility	$930	$1,050	$120	13%
I–612	Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the INA, as Amended).	$930	$1,100	$170	18%
I–690	Application for Waiver of Grounds of Inadmissibility	$715	$985	$270	38%
I–824	Application for Action on an Approved Application or Petition	$465	$675	$210	45%
I–905	Application for Authorization to Issue Certification for Health Care Workers.	$230	$230	$0	0%
I–910	Application for Civil Surgeon Designation	$785	$1,230	$445	57%
I–941	Application for Entrepreneur Parole	$1,200	$1,200	$0	0%
I–941	Application for Entrepreneur Parole (with biometric services)	$1,285	$1,200	−$85	−7%
	Biometric Services (in most cases)	$85	$0	−$85	−100%
	Biometric Services (TPS and EOIR only)	$85	$30	−$55	−65%
	USCIS Immigrant Fee	$220	$235	$15	7%
Genealogy and Records:					
G–1041	Genealogy Index Search Request—Online	$65	$100	$35	54%
G–1041	Genealogy Index Search Request—Paper	$65	$120	$55	85%
G–1041A	Genealogy Records Request—Online	$65	$240	$175	269%
G–1041A	Genealogy Records Request—Paper	$65	$260	$195	300%
G–1041 and G–1041A.	Genealogy Index Search Request and Records Request—Online (digital records).	$130	$100	−$30	−23%
G–1566	Certificate of Non-Existence	$0	$330	$330	N/A
No Fee:					
I–134	Declaration of Financial Support	No Fee	No Fee	N/A	N/A
I–361	Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97–359 Amerasian.	No Fee	No Fee	N/A	N/A
I–363	Request to Enforce Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97–359 Amerasian.	No Fee	No Fee	N/A	N/A

TABLE 1—COMPARISON OF CURRENT [1] AND PROPOSED FEES—Continued

I–407	Record of Abandonment of Lawful Permanent Resident Status	No Fee	No Fee	N/A	N/A
I–485J	Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j).	No Fee	No Fee	N/A	N/A
I–508	Request for Waiver of Certain Rights, Privileges, Exemptions, and Immunities.	No Fee	No Fee	N/A	N/A
I–566	Interagency Record of Request—A, G, or NATO Dependent Employment Authorization or Change/Adjustment To/From A, G, or NATO Status.	No Fee	No Fee	N/A	N/A
I–693	Report of Medical Examination and Vaccination Record	No Fee	No Fee	N/A	N/A
I–854	Inter-Agency Alien Witness and Informant Record	No Fee	No Fee	N/A	N/A
I–864	Affidavit of Support Under Section 213A of the INA	No Fee	No Fee	N/A	N/A
I–864A	Contract Between Sponsor and Household Member	No Fee	No Fee	N/A	N/A
I–864EZ	Affidavit of Support Under Section 213A of the INA	No Fee	No Fee	N/A	N/A
I–864W	Request for Exemption for Intending Immigrant's Affidavit of Support.	No Fee	No Fee	N/A	N/A
I–865	Sponsor's Notice of Change of Address	No Fee	No Fee	N/A	N/A
I–912	Request for Fee Waiver	No Fee	No Fee	N/A	N/A
I–942	Request for Reduced Fee	No Fee	No Fee	N/A	N/A

[1] These are fees that USCIS is currently charging and not those codified by the 2020 fee rule.

Christina E. McDonald,
Federal Register Liaison, U.S. Department of Homeland Security.

[FR Doc. 2023–00274 Filed 1–6–23; 8:45 am]
BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

[NPS–AKRO–33913; PPAKAKROZ5, PPMPRLE1Y.L00000]

RIN 1024–AE70

Alaska; Hunting and Trapping in National Preserves

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) proposes to amend its regulations for sport hunting and trapping in national preserves in Alaska. This proposed rule would prohibit certain harvest practices, including bear baiting; and prohibit predator control or predator reduction on national preserves.

DATES: Comments on the proposed rule must be received by 11:59 p.m. ET on March 10, 2023.

ADDRESSES: You may submit comments, identified by Regulation Identifier Number (RIN) 1024–AE70, by either of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or Hand Deliver to:* National Park Service, Regional Director, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501. *Comments delivered on external electronic storage devices (flash drives, compact discs, etc.) will not be accepted.*
- *Instructions:* Comments will not be accepted by fax, email, or in any way other than those specified above. Comments delivered on external electronic storage devices (flash drives, compact discs, etc.) will not be accepted. All submissions received must include the words ''National Park Service'' or ''NPS'' and must include the docket number or RIN (1024–AE70) for this rulemaking. Comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and search for ''1024–AE70.''

FOR FURTHER INFORMATION CONTACT: Regional Director, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501; phone (907) 644–3510; email: *AKR_Regulations@nps.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

The Alaska National Interest Lands Conservation Act (ANILCA) allows harvest of wildlife in national preserves in Alaska for subsistence purposes by local rural residents under Federal regulations. ANILCA also allows harvest of wildlife for sport purposes by any individual under laws of the State of Alaska (referred to as the State) that do not conflict with federal laws. ANILCA requires the National Park Service (NPS) to manage national preserves consistent with the NPS Organic Act of 1916, which directs the NPS ''to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' 54 U.S.C. 100101(a).

On June 9, 2020, the NPS published a final rule (2020 Rule; 85 FR 35181) that removed restrictions on sport hunting and trapping in national preserves in Alaska that were implemented by the NPS in 2015 (2015 Rule; 80 FR 64325). These included restrictions on the following methods of taking wildlife that were and continue to be authorized by the State in certain locations: taking black bear cubs, and sows with cubs, with artificial light at den sites; harvesting bears over bait; taking wolves and coyotes (including pups) during the denning season (between May 1 and August 9); taking swimming caribou; taking caribou from motorboats under power; and using dogs to hunt black bears. The 2015 Rule prohibited other harvest practices that were and continue to be similarly prohibited by the State. These prohibitions were also removed by the 2020 Rule. The 2020 Rule also removed a statement in the 2015 Rule that State laws or management actions that seek to, or have the potential to, alter or manipulate natural predator populations or processes in order to increase harvest of ungulates by humans are not allowed in national preserves in Alaska. The NPS based the 2020 Rule in part on direction from the Department of the Interior (DOI) to expand recreational hunting opportunities and align hunting opportunities with those established by states. Secretarial Orders 3347 and 3356. The 2020 Rule also responded to direction from the

Secretary of the Interior to review and reconsider regulations that were more restrictive than state provisions, and specifically the restrictions on harvesting wildlife found in the 2015 Rule.

The harvest practices at issue in both the 2015 and 2020 Rules are specific to harvest under the authorization for sport hunting and trapping in ANILCA. Neither rule addressed subsistence harvest by rural residents under title VIII of ANILCA.

The 2015 Rule

Some of the harvest methods prohibited by the 2015 Rule targeted predators. When the NPS restricted these harvest methods in the 2015 Rule, it concluded that these methods were allowed by the State for the purpose of reducing predation by bears and wolves to increase populations of prey species (ungulates) for harvest by human hunters. The State's hunting regulations are driven by proposals from members of the public, fish and game advisory entities, and State and Federal government agencies. The State, through the State of Alaska Board of Game (BOG), deliberates on the various proposals publicly. Many of the comments made in the proposals and BOG deliberations on specific hunting practices showed that they were intended to reduce predator populations for the purpose of increasing prey populations. Though the State objected to this conclusion in its comments on the 2015 Rule, the NPS's conclusion was based on State law and policies; [1] BOG proposals, deliberations, and decisions; [2] and Alaska Department of Fish and Game actions, statements, and publications leading up to the 2015 Rule.[3] Because NPS Management Policies state that the NPS will manage park lands for natural processes (including natural wildlife fluctuations, abundances, and behaviors) and explicitly prohibit predator control, the NPS determined that these harvest methods authorized by the State were in conflict with NPS mandates. NPS Management Policies (4.4.1, 4.4.3) (2006). For these reasons and because the State refused to exempt national preserves from these authorized practices, the NPS prohibited them in the 2015 Rule and adopted a regulatory provision consistent with NPS policy direction on predator control related to harvest. The 2015 Rule further provided that the Regional Director would compile, annually update, and post on the NPS website a list of any State predator control laws or actions prohibited by the NPS on national preserves in Alaska.

As stated above, the 2015 Rule only restricted harvest for ''sport purposes.'' Although this phrase is used in ANILCA, the statute does not define the term ''sport.'' In the 2015 Rule, the NPS reasoned that harvest for subsistence is for the purpose of feeding oneself and family and maintaining cultural practices, and that ''sport'' or recreational hunting invokes Western concepts of fairness which do not necessarily apply to subsistence practices. Therefore, the 2015 Rule prohibited the practices of harvesting swimming caribou and taking caribou from motorboats under power which the NPS concluded were not consistent with generally accepted notions of ''sport'' hunting. This conclusion also supported restrictions in the 2015 Rule on the practices of taking bear cubs and sows with cubs; and using a vehicle to chase, drive, herd, molest, or otherwise disturb wildlife. To illustrate how the 2015 Rule worked in practice, a federally qualified local rural resident could harvest bear cubs and sows with cubs, or could harvest swimming caribou (where authorized under federal subsistence regulations), but a hunter from Anchorage, Fairbanks, Juneau or other nonrural areas in Alaska, or a hunter from outside Alaska, could not.

In the 2015 Rule, the NPS also concluded that the practice of putting out bait to attract bears for harvest poses an unacceptable safety risk to the visiting public and leads to unnatural wildlife behavior by attracting bears to a food source that would not normally be there. The NPS based this conclusion on the understanding that bears are more likely to attack when defending a food source and therefore visitors who encountered a bait station would be at risk from bear attacks. In addition, the NPS concluded that baiting could cause more bears to become conditioned to human food, creating unacceptable public safety risks. The NPS based this conclusion on the fact that not all bears that visit bait stations are harvested; for example, a hunter may not be present when the bear visits the station, or a hunter may decide not to harvest a particular bear for a variety of reasons. Additionally, other animals are attracted to bait stations. Because bait often includes dog food and human food, including items like bacon grease and pancake syrup, which are not a natural component of animal diets, the NPS was concerned that baiting could lead to bears and other animals associating these foods with people, which would create a variety of risks to people, bears, and property. For these reasons, the 2015 Rule prohibited bear baiting in national preserves in Alaska.

The NPS received approximately 70,000 comments during the public comment period for the 2015 Rule. These included unique comment letters, form letters, and signed petitions. Approximately 65,000 comments were form letters. The NPS also received three petitions with a combined total of approximately 75,000 signatures. The NPS counted a letter or petition as a single comment, regardless of the number of signatories. More than 99% of the public comments supported the 2015 Rule. Comments on the 2015 Rule can be viewed on *regulations.gov* by searching for ''RIN 1024–AE21''.

The 2020 Rule

The 2020 Rule reconsidered the conclusions in the 2015 Rule regarding predator control, sport hunting, and bear baiting. First, the 2020 Rule reversed the 2015 Rule's conclusion that the State intended to reduce predator populations through its hunting regulations. As explained above, the NPS's conclusion in the 2015 Rule was based on BOG proposals, deliberations, and decisions; and Alaska Department of Fish and Game actions, statements, and publications that preceded the 2015 Rule. However, in their written comments on the 2015 and 2020 Rules, the State denied that the harvest practices for predators were part of their predator control or intensive management programs and therefore were not efforts to reduce predators. In its written comments, the State argued that the liberalized predator harvest

[1] Alaska Statutes (AS) section 16.05.255(k) (definition of sustained yield); Findings of the Alaska Board of Game, 2006–164–BOG, Board of Game Bear Conservation and Management Policy (May 14, 2006) (rescinded in 2012).

[2] *See, e.g.,* Alaska Board of Game Proposal Book for March 2012, proposals 146, 167, 232.

[3] *See, e.g.,* AS section 16.05.255(e); State of Alaska Department of Fish and Game Emergency Order on Hunting and Trapping 04–01–11 (Mar. 31, 2011) (*available at* Administrative Record for Alaska v. Jewell et al., No. 3:17–cv–00013–JWS, D. Alaska pp. NPS0164632–35), State of Alaska Department of Fish and Game Agenda Change 11 Request to State Board of Game to increase brown bear harvest in game management unit 22 (2015); Alaska Department of Fish and Game Wildlife Conservation Director Corey Rossi, ''Abundance Based Fish, Game Management Can Benefit All,'' Anchorage Daily News (Feb. 21, 2009); ADFG News Release—Wolf Hunting and Trapping Season extended in Unit 9 and 10 in response to caribou population declines (3/31/2011); Alaska Department of Fish and Game Craig Fleener, Testimony to U.S. Senate Committee on Energy and Natural Resources re: Abundance Based Wildlife Management (Sept. 23, 2013); Alaska Department of Fish and Game, Hunting and Trapping Emergency Order 4–01–11 to Extend Wolf Hunting and Trapping Seasons in GMU [Game Management Unit] 9 and 10 (LACL and KATM) (Nov. 25, 2014); ADFG Presentation Intensive Management of Wolves, Bears, and Ungulates in Alaska (Feb. 2009).

rules were simply a means to provide new opportunities for hunters to harvest predators, in response to requests received by the BOG. The State argued that it provided these new opportunities under a ''sustained yield'' management framework, which is distinct from what the State considers ''predator control.'' The State asserted that it has a separate, formal predator control program which is not considered ''hunting'' by the State. According to the State, predator control occurs only through its ''intensive management'' program.

The NPS afforded the State's written comments on the 2020 Rule more weight than it did on the State's similar comments on the 2015 Rule, both of which were in conflict with other contemporaneous public State positions on the matter. The NPS took into account the analysis in the environmental assessment supporting the 2020 Rule, which concluded that the hunting practices in question would not likely alter natural predator-prey dynamics at the population level or have a significant foreseeable adverse impact to wildlife populations, or otherwise impair park resources. The NPS also considered what it viewed as the legislative requirements of ANILCA with respect to hunting. Based upon these considerations, the NPS concluded the hunting practices did not run afoul of NPS Management Policies section 4.4.3, which prohibits predator reduction to increase numbers of harvested prey species. This led the NPS to remove two provisions that were implemented in the 2015 Rule: (1) the statement that State laws or management actions intended to reduce predators are not allowed in NPS units in Alaska, and (2) prohibitions on several methods of harvesting predators. With prohibitions on harvest methods removed, the 2020 Rule went back to deferring to authorizations under State law for harvesting predators. To illustrate how the 2020 Rule works in practice, Alaska residents, including rural and nonrural residents, and out-of-state hunters may take wolves and coyotes (including pups) for sport purposes in national preserves during the denning season in accordance with State law.

The 2020 Rule also relied upon a different interpretation of the term ''sport'' in ANILCA's authorization for harvest of wildlife for sport purposes in national preserves in Alaska. As explained above, the 2015 Rule gave the term ''sport'' its common meaning associated with standards of fairness, and prohibited certain practices that were not compatible with these standards. In the 2020 Rule, the NPS stated that in the absence of a statutory definition, the term ''sport'' merely served to distinguish sport hunting from harvest under federal subsistence regulations. Consequently, under the 2020 Rule, practices that may not be generally compatible with notions of ''sport''—such as harvesting swimming caribou or taking cubs and pups or mothers with their young—may be used by anyone in national preserves in accordance with State law.

Finally, the 2020 Rule reconsidered the risk of bear baiting to the visiting public. The NPS noted that peer-reviewed data are limited on the specific topic of hunting bears over bait. Additionally, the NPS concluded that human-bear interactions are likely to be rare, other than for hunters seeking bears, due to a lack of observed bear conditioning to associate bait stations with humans and the relatively few people in such remote areas to interact with bears. In making this risk assessment, the NPS took into account state regulations on baiting that are intended to mitigate safety concerns, and NPS authority to enact local closures if and where necessary. For these reasons and because of policy direction from the DOI and the Secretary of the Interior requiring maximum deference to state laws on harvest that did not exist in 2015, the 2020 Rule rescinded the prohibition on bear baiting that was implemented in the 2015 Rule. As a result, any Alaska resident, including rural and nonrural residents, or out-of-state hunter may take bears over bait in national preserves in Alaska in accordance with State law, including with the use of human and dog foods.

The NPS received approximately 211,780 pieces of correspondence, with a total of 489,101 signatures, during the public comment period for the 2020 Rule. Of the 211,780 pieces of correspondence, approximately 176,000 were form letters and approximately 35,000 were unique comments. More than 99% of the public comments opposed the 2020 Rule. Comments on the 2020 Rule can be viewed on *regulations.gov* by searching for ''RIN 1024–AE38''.

Proposed Rule

In this proposed rule, the NPS reconsiders the conclusions that supported the 2020 Rule. This proposed rule addresses three topics that were considered in the 2015 and 2020 Rules: (1) bear baiting; (2) the meaning and scope of hunting for ''sport purposes'' under ANILCA; and (3) State law addressing predator harvest. After reconsidering these topics, the NPS proposes in this rule to prohibit the same harvest methods that were prohibited in the 2015 Rule. The proposed rule also would prohibit predator control or predator reduction on national preserves. Finally, the proposed rule would clarify the regulatory definition of trapping for reasons explained below. The NPS has begun consulting and communicating with Tribes and Alaska Native Claims Settlement Act (ANCSA) Corporations that would be most affected by this proposed rule and the feedback provided to date has been incorporated by the NPS in this proposed rule as discussed below.

Bear Baiting

The NPS proposes to prohibit bear baiting in national preserves in Alaska. Bait that hunters typically use to attract bears includes processed foods like bread, pastries, dog food, and bacon grease. As explained below, this proposal would lower the risk that bears will associate food at bait stations with humans and become conditioned to eating human-produced foods, thereby creating a public safety concern. This proposal would also lower the probability of visitors encountering a bait station where bears may attack to defend a food source. The proposal to prohibit baiting is supported by two primary risk factors and other considerations that are discussed below.

Risk of Bears Defending a Food Source

The risks caused by humans feeding bears (including baiting them with food) are widely recognized.[4] Bears are more likely to attack when defending a food source, putting visitors who encounter a bear at or near a bait station or a kill site

[4] Herrero, S. 2018. Bear attacks: their causes and avoidance. Lyons Press, Guilford, Connecticut, USA at p. 22; Glitzenstein, E., Fritschie, J. The Forest Service's Bait and Switch: A Case Study on Bear Baiting and the Service's Struggle to Adopt a Reasoned Policy on a Controversial Hunting Practice within the National Forests. 1 Animal Law 47, 55–56 (1995). *See also,* Denali State Park Management Plan, 69 (2006) (''The practice has the potential for creating serious human-bear conflicts, by encouraging bears to associate campgrounds and other human congregation points with food sources.''); City and Borough of Juneau, Living with Bears: How to Avoid Conflict (*available at https://juneau.org/wp-content/uploads/2017/03/2004_living_w_pamphlet_finaljustified.pdf*), City and Borough of Juneau, Living in Bear Country (*available at https://juneau.org/wp-content/uploads/2017/03/living_in_bear_country_color.pdf*) (''It is well known that garbage kills bears—that is, once bears associate people with a food reward, a chain of events is set into motion and the end result, very often, is a dead bear.''); Biologists say trash bears in Eagle River will be killed—but people are the problem, Anchorage Daily News (*available at www.adn.com/alaska-news/wildlife/2018/06/18/biologists-say-trash-bears-in-eagle-river-will-be-killed-but-people-are-the-problem/*).

at significant risk.[5] Visitors to national preserves in Alaska may inadvertently encounter bears and bait stations while engaging in sightseeing, hiking, boating, hunting, photography, fishing, and a range of other activities. This is because despite the vast, relatively undeveloped nature of these national preserves, most visitation occurs near roads, trails, waterways, or other encampments (*e.g.,* cabins, residences, communities). Establishing and maintaining a bait station requires the transport of supplies, including bait, barrels, tree stands, and game cameras. The same roads, trails, and waterways used by visitors are, therefore, also used by those setting up a bait station. Thus, despite the vast landscapes, bear baiting and many other visitor activities are concentrated around the same limited access points. Processed foods are most commonly used for bait because they are convenient to obtain and are attractive to bears. Processed foods do not degrade quickly nor are they rapidly or easily broken down by insects and microbes. As a result, they persist on the landscape along with the public safety risk of bears defending a food source.

The NPS recognizes that there are restrictions in State law intended to mitigate the risks described above. Bait stations are prohibited within ¼ mile of a road or trail and within one mile of a dwelling, cabin, campground, or other recreational facility. State regulations also require bait station areas to be signed so that the public is aware that a bait station exists. Although these mitigation measures may reduce the immediate risk of park visitors approaching a bear defending bait, NPS records indicate that bait stations established at Wrangell-St. Elias National Park and Preserve often do not comply with the State's minimum distance requirements. Further, as discussed below, these requirements do not mitigate the risk of other adverse outcomes associated with baiting that are discussed below.

Risk of Habituated and Food-Conditioned Bears

Another aspect of bear baiting that poses a public safety and property risk is the possibility that bears become habituated to humans through exposure to human scents at bait stations and then become food conditioned, meaning they learn to associate humans with a food reward (bait). This is particularly true of processed foods that are not part of a bear's natural diet because virtually all encounters with processed foods include exposure to human scent.

It is well understood that habituated and food-conditioned bears pose a heightened public safety risk.[6] The published works of Stephen Herrero, a recognized authority on human-bear conflicts and bear attacks explain the dangers from bears that are habituated to people or have learned to feed on human food, highlight that habituation combined with food-conditioning has been associated with a large number of injuries to humans, and indicate food-conditioning of bears may result from exposure to human food at bait stations.

The State's mitigation measures mentioned above, including requirements for buffers and signage, do not adequately address the risk associated with habituated and food-conditioned bears because bears range widely, having home ranges of tens to hundreds of square miles.[7] The buffers around roads, trails, and dwellings are therefore inconsequential for bears that feed at bait stations but are not harvested there. These bears have the potential to become habituated to humans and conditioned to human-produced foods, resulting in increased likelihood of incidents that compromise public safety, result in property damage and threaten the lives of bears who are killed in defense of human life and property.

In the 2020 Rule, the NPS determined that the lack of conclusive evidence that bear baiting poses safety concerns justified allowing bear baiting. While the NPS acknowledges the lack of peer-reviewed data demonstrating that bear baiting poses a public safety risk, this data gap exists primarily because rigorous studies specific to this point are logistically and ethically infeasible. The determination made by the NPS in the 2020 Rule did not fully consider the vast experience and knowledge of recognized experts and professional resource managers. In April 2022, the NPS queried 14 NPS resource managers and wildlife biologists from 12 different National Park System units in Alaska about bear baiting. These technical experts' unanimous opinion was that bear baiting will increase the likelihood of defense of life and property kills of bears and will alter the natural processes and behaviors of bears and other wildlife. Considering the potential for significant human injury or even death, these experts considered the overall risk of bear baiting to the visiting public to be moderate to high. These findings generally agree with the universal recognition in the field of bear management that food conditioned bears result in increased bear mortality and heightened risk to public safety and property, and that baiting, by its very design and intent, alters bear behavior. The findings also are consistent with the State's management plan for Denali State Park. The management plan expresses concern that bear baiting ''teaches bears to associate humans with food sources'' and states that bear baiting is in direct conflict with recreational, non-hunting uses of the park. The plan further notes that bear baiting has ''the potential for creating serious human-bear conflicts, by encouraging bears to associate campgrounds and other human congregation points with food sources.''[8]

Other Considerations

In addition to the risks explained above, there are other considerations that support the proposal to prohibit all bear baiting. The NPS is guided by its mandates under the NPS Organic Act to conserve wildlife and under ANILCA to protect wildlife populations. Food-conditioned bears are more likely to be killed by authorities or by the public in defense of life or property.[9] While the NPS supports wildlife harvest as authorized in ANILCA, it cannot

[5] Herrero, S. 2018. Bear attacks: their causes and avoidance. Lyons Press, Guilford, Connecticut, USA. at p. 22; Glitzenstein, E., Fritschie, J. The Forest Service's Bait and Switch: A Case Study on Bear Baiting and the Service's Struggle to Adopt a Reasoned Policy on a Controversial Hunting Practice within the National Forests. 1 Animal Law 47, 55–56 (1995).

[6] Herrero, S. 2018. Bear attacks: their causes and avoidance. Lyons Press, Guilford, Connecticut, USA. at p. 22; Glitzenstein, E., Fritschie, J. The Forest Service's Bait and Switch: A Case Study on Bear Baiting and the Service's Struggle to Adopt a Reasoned Policy on a Controversial Hunting Practice within the National Forests. 1 Animal Law 47, 55–56 (1995).

[7] *See, e.g.,* Glitzenstein, E., Fritschie, J. The Forest Service's Bait and Switch: A Case Study on Bear Baiting and the Service's Struggle to Adopt a Reasoned Policy on a Controversial Hunting Practice within the National Forests. 1 Animal Law 52–53 (1995).

[8] Denali State Park Management Plan, 69 (2006).

[9] *See e.g.,* City and Borough of Juneau, Living with Bears: How to Avoid Conflict (*available at https://juneau.org/wp-content/uploads/2017/03/2004_living_w_pamphlet_finaljustified.pdf*), City and Borough of Juneau, Living in Bear Country (*available at https://juneau.org/wp-content/uploads/2017/03/living_in_bear_country_color.pdf*) (''It is well known that garbage kills bears—that is, once bears associate people with a food reward, a chain of events is set into motion and the end result, very often, is a dead bear.''); Biologists say trash bears in Eagle River will be killed—but people are the problem, Anchorage Daily News (*available at www.adn.com/alaska-news/wildlife/2018/06/18/biologists-say-trash-bears-in-eagle-river-will-be-killed-but-people-are-the-problem/*); Glitzenstein, E., Fritschie, J. The Forest Service's Bait and Switch: A Case Study on Bear Baiting and the Service's Struggle to Adopt a Reasoned Policy on a Controversial Hunting Practice within the National Forests. 1 Animal Law 52–53 (1995).

promote activities that increase non-harvest mortalities of bears.

Feedback From Tribes and ANCSA Corporations on Bear Baiting

Feedback received to date from Tribes and ANCSA Corporations indicates baiting bears is not a common activity in or near national preserves and not something done commonly by local rural residents. Many of the entities voiced support for prohibiting baiting altogether, limiting bait to natural items, increasing buffer zones around developments, or requiring a permit. On the other hand, a minority—mostly entities affiliated with the Wrangell-St. Elias area—recommended continuing to allow sport hunters to harvest bears over bait, including with use of processed foods like donuts and dog food. Consultation and communication with Tribes and ANCSA Corporations is ongoing and feedback will continue to be considered by the NPS throughout the rulemaking process.

The Meaning and Scope of Hunting for ''Sport Purposes'' Under ANILCA

Hunting is prohibited in National Park System units except as specifically authorized by Congress. 36 CFR 2.2(b). Title VIII of ANILCA allows local rural residents to harvest wildlife for subsistence in most, but not all, lands administered by the NPS in Alaska. Title VIII also created a priority for federal subsistence harvest over other consumptive uses of fish and wildlife. Separate from subsistence harvest, ANILCA authorized anyone to harvest wildlife for ''sport purposes.'' When first authorized under ANILCA, the State managed subsistence harvest by local rural residents under Title VIII as well as harvest for sport purposes by anyone. After a ruling from the State Supreme Court that the State Constitution barred the State from implementing the rural subsistence provisions of ANILCA, the Federal government assumed management of subsistence harvest under title VIII. Following this decision, the State only regulates harvest for sport purposes under ANILCA.[10] Under the State's current framework, Alaska residents have a priority over nonresidents but there is no prioritization based upon where one resides in Alaska. Accordingly, all residents of Alaska have an equal opportunity to harvest wildlife for ''sport purposes'' in national preserves under State law.

The NPS is re-evaluating whether it was appropriate for the 2020 Rule to change its interpretation of the term ''sport'' in the 2015 Rule. An important implication of that change is that the 2020 Rule expanded sport hunting opportunities for nonlocal residents who are not qualified to harvest wildlife under federal subsistence laws. As mentioned above, in the spring of 2022 the NPS reached out to Tribes and ANCSA Corporations that are most likely to be impacted by this proposed rule. In these discussions, most of these entities expressed concern that increasing harvest opportunities under ANILCA's authorization for sport hunting and trapping could result in increased competition from individuals that are not local to the area. In addition, most of these entities do not believe there is a demand to engage in these harvest practices in national preserves (other than limited demand to bait bears in Wrangell-St. Elias) and expressed a preference that the NPS not authorize practices that could encourage more nonlocal hunters to visit the area and compete for wildlife resources.

This feedback from Tribes and ANCSA Corporations illustrates a tension between the interests conveyed and the outcome of the 2020 Rule which increased harvest opportunities for nonlocal rural residents. In the 2015 Rule, the NPS said harvest of wildlife for ''sport purposes'' carries with it concepts of fairness or fair chase. These constructs do not necessarily apply to subsistence practices which emphasize cultural traditions and acquisition of calories for sustenance. In the 2020 Rule, the NPS changed its interpretation by saying the term ''sport'' only serves to differentiate harvest under State regulations from harvest under federal subsistence regulations. As a result, practices that some might consider only appropriate for subsistence harvest by local rural residents now may be used by anyone harvesting for ''sport purposes'' under State law. As conveyed by the Tribes and ANCSA Corporations, this increases competition between federal subsistence hunters and sport hunters by expanding hunting opportunities to those who are not local rural residents. It also allows for sport hunters to engage in practices that are not considered sporting under notions of the term as described above. The examples below illustrate how this issue plays out in national preserves in Alaska today:

- *Swimming caribou.* Under the 2015 Rule, only qualified rural residents could harvest swimming caribou in national preserves in accordance with federal subsistence regulations, which recognize the practice as part of a customary and traditional subsistence lifestyle. Individuals from Anchorage, Fairbanks, Juneau and other nonrural areas in Alaska, as well as out-of-state hunters, could not harvest swimming caribou in national preserves. Under the 2020 Rule, residents of nonrural areas in Alaska (including Anchorage, Fairbanks, and Juneau) and out-of-state hunters can harvest swimming caribou in national preserves in accordance with State law under ANILCA's authorization for harvest for ''sport purposes.''
- *Black bear cubs and sows with cubs.* Under the 2015 Rule, only a qualified rural resident could harvest bear cubs and sows with cubs in accordance with federal subsistence regulations, which recognize this practice as an uncommon but customary and traditional harvest practice by some Native cultures in northern Alaska. Accordingly, while the NPS supported the activity under federal subsistence regulations, the NPS did not support it under ANILCA's authorization for ''sport'' hunting.'' Under the 2020 Rule which deferred to State law, harvest of bear cubs and sows with cubs is not limited based on where one resides. Accordingly, under the 2020 Rule individuals who are not local to the area can harvest bear cubs and sows with cubs at den sites in national preserves under ANILCA's authorization for harvest for ''sport'' purposes.
- *Take of wolves and coyotes, including pups, during the denning season.* The 2015 Rule prohibited sport hunters from taking wolves and coyotes during the denning season, a time when their pelts are not in prime condition, which can leave pups and cubs orphaned and left to starve. Under the 2020 Rule, any hunter (including those from out of state) can harvest wolves and coyotes year-round, including pups during the denning season. This reduces the number of wolves and coyotes available to harvest when their pelts are fuller and therefore more desirable to subsistence users and other trappers.

These examples demonstrate that the NPS's interpretation of the term ''sport'' under the 2015 Rule created a result that is more in line with the majority of feedback received to date from Tribes and ANCSA Corporations. The NPS Organic Act directs the NPS to conserve wildlife. Based upon this conservation mandate, hunting is prohibited in National Park System units except as authorized by Congress. 36 CFR 2.2(b).

[10] The State of Alaska also uses the term ''subsistence'' when referencing harvest of fish and wildlife by state residents. It is important to recognize, however, that state subsistence harvest is not the same as federal subsistence under title VIII of ANILCA, which is limited to only local rural residents. When the term ''subsistence'' is used in this document, it refers to subsistence under title VIII of ANILCA and harvest of fish and wildlife under federal regulations.

ANILCA authorizes harvest for Federal subsistence and ''sport purposes'' in national preserves in Alaska. The NPS interprets the term ''sport'' to include the concept of fair chase as articulated by some hunting organizations,[11] as not providing an unfair advantage to the hunter and allowing the game to have a reasonable chance of escape. This involves avoiding the targeting of animals that are particularly vulnerable, such as while swimming, while young, or while caring for their young. While the NPS understands that the exact boundaries of this concept involve some level of ambiguity, the NPS believes the practices addressed in this proposed rule fall outside the norms of ''sport'' hunting.

The NPS requests comment on this concept of ''sport'' and whether the practices described in these examples should be allowed as a ''sport'' hunt in national preserves in Alaska. Giving meaning of the term ''sport'' also prioritizes harvest for subsistence by local rural residents by avoiding competition with nonlocal residents who are hunting for sport purposes under ANILCA. This is consistent with the priority that Congress placed on the customary and traditional uses of wild renewable resources by local rural residents under ANILCA (*see* Sec. 101(c)). For these reasons, the proposed rule would reinstate the prohibitions in the 2015 Rule on methods of harvest that are not compatible with generally accepted notions of ''sport'' hunting. The proposed rule would define the terms ''big game,'' ''cub bear,'' ''fur animal,'' and ''furbearer,'' which are used in the table of prohibited harvest methods, in the same way they were defined in the 2015 Rule.

State Law Addressing Predator Harvest

The proposed rule also would address opportunities to harvest predators that are authorized by the State. NPS policy interprets and implements the NPS Organic Act. NPS Management Policies require the NPS to manage National Park System units for natural processes, including natural wildlife fluctuations, abundances, and behaviors, and specifically prohibit the NPS from engaging in predator reduction efforts to benefit one harvested species over another or allowing others to do so on NPS lands. (NPS Management Policies 2006, Ch. 4). These activities are prohibited by policy even if they do not actually reduce predator populations or increase the number of prey species available to hunters. The NPS believes the 2020 Rule is in tension with these policies based upon the information it collected over a period of years before the publication of the 2015 Rule. This information indicates that the predator harvest practices that were allowed by the State were allowed for the purpose of benefited prey species over predators. For this reason, the proposed rule would reinstate the prohibitions in the 2015 Rule on methods of harvest that target predators for the purpose of increasing populations of prey species for human harvest. In addition, the proposed rule would add the following statement to its regulations to clarify that predator control is not allowed on NPS lands: ''Actions to reduce the numbers of native species for the purpose of increasing the numbers of harvested species (*e.g.,* predator control or predator reduction) are not allowed.''

Trapping Clarification

Finally, the proposed rule would revise the definition of ''trapping'' in part 13 to clarify that trapping only includes activities that use a ''trap'' as that term is defined in part 13. The definition of ''trapping'' promulgated in the 2015 Rule inadvertently omitted reference to the use of traps, instead referring only to ''taking furbearers under a trapping license.'' The proposed revision would resolve any question about whether trapping can include any method of taking furbearers under a trapping license, which could include the use of firearms depending upon the terms of the license. This change would more closely align the definition of ''trapping'' in part 13 with the definition that applies to System units outside of Alaska in part 1.

Compliance With Other Laws, Executive Orders and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the OMB will review all significant rules. The Office of Information and Regulatory Affairs has determined that this proposed rule is significant because it raises novel legal or policy issues. The NPS has assessed the potential costs and benefits of this proposed rule in the report entitled ''Cost-Benefit and Regulatory Flexibility Analyses: Alaska Hunting and Trapping Regulations in National Preserves'' which can be viewed online at *https://www.regulations.gov* by searching for ''1024–AE70.'' Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The NPS has developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act

This proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on the cost-benefit and regulatory flexibility analyses found in the report entitled ''Cost-Benefit and Regulatory Flexibility Analyses: Alaska Hunting and Trapping Regulations in National Preserves'' which can be viewed online at *https://www.regulations.gov* by searching for ''1024–AE70.

Unfunded Mandates Reform Act

This proposed rule does not impose an unfunded mandate on Tribal, State, or local governments or the private sector of more than $100 million per year. The proposed rule does not have a significant or unique effect on Tribal, State, or local governments or the private sector. It addresses public use of national park lands and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This proposed rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This proposed rule only affects use of federally administered

[11] The Hunting Heritage Foundation, *www.huntingheritagefoundation.com* (last visited July 25, 2022); Boone and Crockett Club, *www.boone-crockett.org/principles-fair-chase* (last visited July 25, 2022).

lands and waters. It has no outside effects on other areas. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This proposed rule complies with the requirements of Executive Order 12988. This proposed rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes and ANCSA Corporations (Executive Order 13175 and Department Policy)

The DOI strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. The NPS has begun consulting and communicating with Tribes and ANCSA Corporations that would be most affected by this proposed rule and the feedback provided to date has been incorporated by the NPS in this proposed rule. The NPS has evaluated this proposed rule under the criteria in Executive Order 13175 and under the Department's Tribal consultation and ANCSA Corporation policies. This proposed rule would restrict harvest methods for sport hunting only; it would not affect subsistence harvest under Title VIII of ANILCA. Feedback from Tribes and ANCSA Corporations indicates that these harvest methods are not common or allowed in many areas by the State. For these reasons, the NPS does not believe the proposed rule will have a substantial direct effect on federally recognized Tribes or ANCSA Corporation lands, water areas, or resources. Consultation and communication with Tribes and ANCSA Corporations is ongoing and feedback will continue to be considered by the NPS throughout the rulemaking process.

Paperwork Reduction Act

This proposed rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. The NPS may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

The NPS will prepare an environmental assessment of this proposed rule to determine whether this proposed rule will have a significant impact on the quality of the human environment under the National Environmental Policy Act of 1969. The environmental assessment will include new information, as appropriate, as well as an impact analysis similar to what was provided in the environmental assessments prepared for the 2015 Rule and the 2020 Rule, both of which resulted in a finding of no significant impact.

Effects on the Energy Supply (Executive Order 13211)

This proposed rule is not a significant energy action under the definition in Executive Order 13211; the proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and the proposed rule has not otherwise been designated by the Administrator of Office of Information and Regulatory Affairs as a significant energy action. A Statement of Energy Effects is not required.

Clarity of This Rule

The NPS is required by Executive Orders 12866 (section 1(b)(12)) and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule the NPS publishes must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that the NPS has not met these requirements, send the NPS comments by one of the methods listed in the **ADDRESSES** section. To better help the NPS revise the rule, your comments should be as specific as possible. For example, you should identify the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Participation

It is the policy of the DOI, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section of this document.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask the NPS in your comment to withhold your personal identifying information from public review, the NPS cannot guarantee that it will be able to do so.

List of Subjects in 36 CFR Part 13

Alaska, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 13 as set forth below:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

■ 1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 3101 *et seq.;* 54 U.S.C. 100101, 100751, 320102; Sec. 13.1204 also issued under Pub. L. 104–333, Sec. 1035, 110 Stat. 4240, November 12, 1996.

■ 2. In § 13.1:

■ a. Add in alphabetical order the definitions for ''Big game'', ''Cub bear'', ''Fur animal'', and ''Furbearer''.

■ b. Revise the definition of ''Trapping''.

The additions and revision read as follows:

§ 13.1 Definitions.

* * * * *

Big game means black bear, brown bear, bison, caribou, Sitka black-tailed deer, elk, mountain goat, moose, muskox, Dall's sheep, wolf, and wolverine.

* * * * *

Cub bear means a brown (grizzly) bear in its first or second year of life, or a black bear (including the cinnamon and blue phases) in its first year of life.

* * * * *

Fur animal means a classification of animals subject to taking with a hunting license, consisting of beaver, coyote, arctic fox, red fox, lynx, flying squirrel, ground squirrel, or red squirrel that have not been domestically raised.

Furbearer means a beaver, coyote, arctic fox, red fox, lynx, marten, mink, least weasel, short-tailed weasel, muskrat, land otter, red squirrel, flying squirrel, ground squirrel, Alaskan marmot, hoary marmot, woodchuck, wolf and wolverine.

* * * * *

Trapping means taking furbearers with a trap under a trapping license.

* * * * *

■ 3. In § 13.42, add paragraphs (f) and (k) to read as follows:

§ 13.42 Taking of wildlife in national preserves.

* * * * *

(f) Actions to reduce the numbers of native species for the purpose of increasing the numbers of harvested species (*e.g.,* predator control or predator reduction) are prohibited.

* * * * *

(k) This paragraph applies to the taking of wildlife in park areas administered as national preserves except for subsistence uses by local rural residents pursuant to applicable Federal law and regulation. The following are prohibited:

TABLE 1 TO PARAGRAPH (k)

Prohibited acts	Any exceptions?
(1) Shooting from, on, or across a park road or highway	None.
(2) Using any poison or other substance that kills or temporarily incapacitates wildlife.	None.
(3) Taking wildlife from an aircraft, off-road vehicle, motorboat, motor vehicle, or snowmachine.	If the motor has been completely shut off and progress from the motor's power has ceased.
(4) Using an aircraft, snowmachine, off-road vehicle, motorboat, or other motor vehicle to harass wildlife, including chasing, driving, herding, molesting, or otherwise disturbing wildlife.	None.
(5) Taking big game while the animal is swimming	None.
(6) Using a machine gun, a set gun, or a shotgun larger than 10 gauge	None.
(7) Using the aid of a pit, fire, artificial salt lick, explosive, expanding gas arrow, bomb, smoke, chemical, or a conventional steel trap with an inside jaw spread over nine inches.	Killer style traps with an inside jaw spread less than 13 inches may be used for trapping, except to take any species of bear or ungulate.
(8) Using any electronic device to take, harass, chase, drive, herd, or molest wildlife, including but not limited to: artificial light; laser sights; electronically enhanced night vision scope; any device that has been airborne, controlled remotely, and used to spot or locate game with the use of a camera, video, or other sensing device; radio or satellite communication; cellular or satellite telephone; or motion detector.	(i) Rangefinders may be used. (ii) Electronic calls may be used for game animals except moose. (iii) Artificial light may be used for the purpose of taking furbearers under a trapping license during an open season from Nov. 1 through March 31 where authorized by the State. (iv) Artificial light may be used by a tracking dog handler with one leashed dog to aid in tracking and dispatching a wounded big game animal. (v) Electronic devices approved in writing by the Regional Director.
(9) Using snares, nets, or traps to take any species of bear or ungulate	None.
(10) Using bait.	Using bait to trap furbearers.
(11) Taking big game with the aid or use of a dog	Leashed dog for tracking wounded big game.
(12) Taking wolves and coyotes from May 1 through August 9	None.
(13) Taking cub bears or female bears with cubs	None.
(14) Taking a fur animal or furbearer by disturbing or destroying a den	Muskrat pushups or feeding houses.

Shannon Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2023–00142 Filed 1–6–23; 8:45 am]

BILLING CODE 4312–52–P

Notices

Federal Register
Vol. 88, No. 5
Monday, January 9, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on January 25 and 26, 2023, 9 a.m., Eastern Standard Time, in the Herbert C. Hoover Building, Room 3884, 1401 Constitution Avenue NW, Washington, DC (enter through Main Entrance on 14th Street between Constitution and Pennsylvania Avenues). The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

Wednesday, January 25

Open Session

1. Welcome and Introductions
2. Working Group Reports
3. Old Business

Thursday, January 26

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than January 18, 2023.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 3, 2023, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. § (10)(d))), that the portion of the meeting concerning trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting concerning matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, contact Ms. Springer via email.

Yvette Springer,
Committee Liaison Officer.

[FR Doc. 2023–00164 Filed 1–6–23; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–873]

Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From India: Final Results of Antidumping Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Tube Products of India, Ltd., a unit of Tube Investments of India Limited (collectively, TII) made sales of subject merchandise in the United States at prices below normal value during the period of review (POR) June 1, 2020, through May 31, 2021.

DATES: Applicable January 9, 2023.

FOR FURTHER INFORMATION CONTACT: Alexis Cherry or Samantha Kinney, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0607 or (202) 482–5305, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2022, Commerce published the preliminary results of the 2020–2021 administrative review of the antidumping duty order on certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from India, covering one producer/exporter, TII.[1] For the events that occurred since Commerce published the *Preliminary Results, see* the Issues and Decision Memorandum.[2] Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [3]

The merchandise subject to the *Order* is cold-drawn mechanical tubing from India. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7304.31.3000, 7304.31.6050, 7304.51.1000, 7304.51.5005, 7304.51.5060, 7306.30.5015, 7306.30.5020, and 7306.50.5030. Subject merchandise may also enter under 7306.30.1000 and 7306.50.1000. The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the *Order* is dispositive. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

[1] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 40499 (July 7, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China, the Federal Republic of Germany, India, Italy, the Republic of Korea, and Switzerland: Antidumping Duty Orders; and Amended Final Determinations of Sales at Less Than Fair Value for the People's Republic of China and Switzerland,* 83 FR 26962 (June 11, 2018) (*Order*).

Analysis of Comments Received

All issues raised by parties in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is included in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade/gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our analysis of the comments received and our verification findings, Commerce made certain revisions to the margin calculations for TII. The Issues and Decision Memorandum contains descriptions of these revisions.

Final Results of Review

We determine that the following weighted-average dumping margin exists for the period June 1, 2020, through May 31, 2021:

Producer/exporter	Weighted-average dumping margin (percent)
Tube Products of India, Ltd., a unit of Tube Investments of India Limited	16.80

Disclosure

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

Assessment Rates

Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Pursuant to 19 CFR 351.212(b)(1), where the respondent reported the entered value of its U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where the respondent did not report entered value, we calculated importer-specific per-unit duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity of those sales. Where an importer-specific assessment rate is *de minimis* (*i.e.,* less than 0.5 percent), the entries by that importer will be liquidated without regard to antidumping duties. To determine whether an importer-specific per-unit duty assessment rate is *de minimis,* we calculated an estimated entered value.

Consistent with Commerce's clarification of its assessment practice, for entries of subject merchandise during the POR produced by TII for which it did not know the merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[4]

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of cold-drawn mechanical tubing from India entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for TII will be equal to the weighted-average dumping margin established in the final results of the review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 5.87 percent, the all-others rate established in the LTFV investigation in this proceeding.[5] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

We are issuing and publishing these results of administrative review in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: January 3, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Changes to the *Preliminary Results*
V. Discussion of the Issues
  Comment 1: Home Market (HM) Inland Freight
  Comment 2: U.S. Date of Shipment
  Comment 3: Sales Outside the POR
  Comment 4: Treatment of Other Verification Corrections

[4] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[5] *See Order,* 83 FR at 26962, 26965.

VI. Recommendation

[FR Doc. 2023–00148 Filed 1–6–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of Approved International Trade Administration Trade Mission

AGENCY: International Trade Administration, Department of Commerce.

SUMMARY: The United States Department of Commerce, International Trade Administration (ITA), is announcing one upcoming trade mission that will be recruited, organized, and implemented by ITA. This mission is: Executive-led Business Development Trade Mission to Kenya with optional (Gold Key) stop in Tanzania, March 28–30, 2023. A summary of the mission is found below. Application information and more detailed mission information, including the commercial setting and sector information, can be found at the trade mission website: *https://www.trade.gov/trade-missions.* For each mission, recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*https://www.trade.gov/trade-missions-schedule*) and other internet websites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

FOR FURTHER INFORMATION CONTACT: Jeffrey Odum, Events Management Task Force, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–6397 or email *Jeffrey.Odum@trade.gov.*

SUPPLEMENTARY INFORMATION:

The Following Conditions for Participation Will Be Used for the Mission

Applicants must submit a completed and signed mission application and supplemental application materials, including adequate information on their products and/or services, primary market objectives, and goals for participation that is adequate to allow the Department of Commerce to evaluate their application. If the Department of Commerce receives an incomplete application, the Department of Commerce may either: reject the application, request additional information/clarification, or take the lack of information into account when evaluating the application. If the requisite minimum number of participants is not selected for a particular mission by the recruitment deadline, the mission may be cancelled.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, are marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content by value. In the case of a trade association or organization, the applicant must certify that, for each firm or service provider to be represented by the association/organization, the products and/or services the represented firm or service provider seeks to export are either produced in the United States or, if not, marketed under the name of a U.S. firm and have at least 51% U.S. content.

A trade association/organization applicant must certify to the above for every company it seeks to represent on the mission. In addition, each applicant must:

- Certify that the products and services that it wishes to market through the mission would be in compliance with U.S. export controls and regulations;
- Certify that it has identified any matter pending before any bureau or office in the Department of Commerce;
- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and
- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

In the case of a trade association/organization, the applicant must certify that each firm or service provider to be represented by the association/organization can make the above certifications.

The Following Selection Criteria Will Be Used for the Mission

Targeted mission participants are U.S. firms, services providers and trade associations/organizations providing or promoting U.S. products and services that have an interest in entering or expanding their business in the mission's destination country. The following criteria will be evaluated in selecting participants:

- Suitability of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) products or services to these markets;
- The applicant's (or in the case of a trade association/organization, represented firm's or service provider's) potential for business in the markets, including likelihood of exports resulting from the mission; and
- Consistency of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) goals and objectives with the stated scope of the mission.
- ITA seeks to ensure that the trade mission represents a diverse swathe of U.S. businesses seeking to export. Considerations when reviewing applications will include: size of the company represented; volume and/or value of the company's current exports.

Balance of company size and location may also be considered during the review process. Referrals from a political party or partisan political group or any information, including on the application, containing references to political contributions or other partisan political activities will be excluded from the application and will not be considered during the selection process. The sender will be notified of these exclusions. Companies will be selected on a rolling basis, with priority given to those that apply and pay earlier.

Trade Mission Participation Fees

If and when an applicant is selected to participate on a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee below is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government rates for hotel rooms. In the event that a mission is cancelled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a cancelled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

If a visa is required to travel on a particular mission, applying for and

obtaining such a visa will be the responsibility of the mission participant. Government fees and processing expenses to obtain such a visa are not included in the participation fee. However, the Department of Commerce will provide instructions to each participant on the procedures required to obtain business visas.

Trade mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at *https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html/.* Any question regarding insurance coverage must be resolved by the participant and its insurer of choice.

Definition of Small- and Medium-Sized Enterprise

For purposes of assessing participation fees, an applicant is a small or medium-sized enterprise (SME) if it qualifies as a ''small business'' under the Small Business Administration's (SBA) size standards (*https://www.sba.gov/document/support--table-size-standards*), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool (*https://www.sba.gov/size-standards*) can help you determine the qualifications that apply to your company.

Important Note About the COVID–19 Pandemic

Travel and in-person activities are contingent upon the safety and health conditions in the United States and the mission countries. Should safety or health conditions not be appropriate for travel and/or in-person activities, the Department will consider postponing the event or offering a virtual program in lieu of an in-person agenda. In the event of a postponement, the Department will notify the public and applicants previously selected to participate in this mission will need to confirm their availability but need not reapply. Should the decision be made to organize a virtual program, the Department will adjust fees, accordingly, prepare an agenda for virtual activities, and notify the previously selected applicants with the option to opt-in to the new virtual program.

Mission List: (additional information about trade missions can be found at *https://www.trade.gov/trade-missions*).

Executive-Led Business Development Trade Mission to Kenya With Optional (Gold Key) Stop in Tanzania, March 28–30, 2023

Summary

The United States Department of Commerce, International Trade Administration (ITA), is organizing an Executive-led Business Development Trade Mission to Kenya with optional (Gold Key) stop in Tanzania, March 28–30, 2023. The mission is designed to coincide with ITA-supported American Chamber of Commerce (AmCham) Kenya's Regional Summit (Summit) that brings together sister chambers from other East African Community (EAC) member countries (Burundi, the Democratic Republic of Congo, Rwanda, South Sudan, Tanzania, and Uganda). The target participants will be businesses in the healthcare, information communication technology, and infrastructure sectors.

Recruitment and consideration will be extended to all export-ready companies that meet the established criteria for participation in the mission.

The mission will begin in Nairobi, Kenya where delegates will participate in pre-arranged business-to-government (B2G) and business-to-business (B2B) meetings to directly present their products and solutions to key Government of Kenya (GOK) ministries and parastatals that have projects in the selected priority sectors. Following these meetings, interested companies may choose to take part in the AmCham Kenya Regional Summit, themed ''Economic Dynamism: Transformation for the Future.'' This Summit, independently organized by AmCham, will accord U.S. businesses with opportunities to gain exposure to government and business leaders from markets across East Africa. In addition to the two-part program in Kenya, interested companies can select an additional optional spin-off for tailored B2G and business meetings in Tanzania before or after the Kenyan program.

Proposed Timetable

*** Note:** The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.

Sunday, March 26
(OPTIONAL) Arrive in Dar es Salaam, Tanzania
Monday, March 27
Optional Gold Keys
- Depart for Nairobi (evening flight)

Tuesday, March 28
- U.S. Embassy Briefing
- Trade Mission B2G/B2B Meetings
- Official Reception at Ambassador's Residence

Wednesday–Thursday, March 29–30
- AmCham Summit 2023
- Panel Sessions
- Industry breakouts
- B2B Summit Meetings
- Summit Reception
- (OPTIONAL) Take evening flight to Dar es Salaam

Friday–March 31
- Optional Gold Keys

Participation Requirements

All parties interested in participating in the Executive-led Business Development Trade Mission to Kenya must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and satisfy the selection criteria as outlined below. A minimum of twelve and maximum of fifteen firms and/or trade associations will be selected to participate in the mission from the applicant pool.

Fees and Expenses

After a firm or trade association has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee for Executive-led Business Development Trade Mission to Kenya will be $2,400 for small or medium-sized enterprises (SME) and $3,500 for large firms or trade associations.[1] The fee for each additional firm representative (large firm or SME/trade organization) is $500. Fees for optional spinoff to Tanzania will follow the Gold Key Service fee structure at an additional $950 per small, $2,300 per medium, and $3,400 per large firm and trade association/organization. Participants wishing to participate in the AmCham Summit will be required to purchase tickets directly from the American Chamber of Commerce Kenya. VIP tickets are $500, with a standard ticket option costing $300, or Early Bird tickets for $250. Expenses for travel, lodging, meals, and incidentals will be the responsibility of

[1] For purposes of assessing participation fees, an applicant is a small or medium-sized enterprise (SME) if it qualifies under the Small Business Administration's (SBA) size standards (*https://www.sba.gov/document/support--table-size-standards*), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool [*https://www.sba.gov/size-standards/*] can help you determine the qualifications that apply to your company.

each mission participant. Interpreter and driver services can be arranged for additional cost. Delegation members will be able to take advantage of U.S. Embassy rates for hotel rooms.

If an applicant is selected to participate on a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government rates for hotel rooms. In the event that a mission is cancelled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a cancelled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

If a visa is required to travel on a particular mission, applying for and obtaining such a visa will be the responsibility of the mission participant. Government fees and processing expenses to obtain such a visa are not included in the participation fee. However, the Department of Commerce will provide instructions to each participant on the procedures required to obtain business visas.

Trade mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at *https://travel.state.gov/content/passports/en/alertswarnings.html.* Any question regarding insurance coverage must be resolved by the participant and its insurer of choice.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Department of Commerce trade mission calendar (*http://export.gov/trademissions*) and other internet websites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will conclude on January 27, 2023. The Department of Commerce will review applications on a rolling basis and inform applicants of selection decisions on a comparative basis. Applications received after January 27, 2023, will be considered only if space and scheduling constraints permit.

Contacts

Larry Tabash (Recruitment Lead), Global Team Lead, Middle East & Africa, +1 512–936–0039, *Larry.Tabash@trade.gov*

Deb Carey (Project Lead), International Trade Specialist, +1 202–830–5545, *Deborah.Carey@trade.gov*

U.S. & Foreign Commercial Service—Nairobi Team

Leone Mutoka, Commercial Assistant, +254–20–363–6438, *Leone.Mutoka@trade.gov*

Judy Magondu, Commercial Assistant, +254 (20) 363–6400, *Judy.Magondu@trade.gov*

Josh Startup, Commercial Officer, +254–20–363–6000 ext. 6424, *Joshua.Startup@trade.gov*

Feleke Assefa, Senior Commercial Officer, +254–20–363–6000 ext. 6424, *Feleke.Assefa@trade.gov*

U.S. & Foreign Commercial Service—Dar es Salaam Team

Ken Walsh, Senior Commercial Officer, +255–22–229–4243, *Ken.walsh@trade.gov*

Athanas Lupatu, Commercial Specialist, +255–22–229–4341, *Athanasius.lupatu@trade.gov*

Gemal Brangman,

Director, ITA Events Management Task Force.

[FR Doc. 2023–00114 Filed 1–6–23; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–889]

Certain Quartz Surface Products From India: Final Results of Antidumping Duty Administrative Review; 2019–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain quartz surface products (QSP) from India was sold in the United States at less than normal value during the period of review (POR), December 13, 2019, through May 31, 2021.

DATES: Applicable January 9, 2023.

FOR FURTHER INFORMATION CONTACT: David Lindgren or Charles Doss, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1671 or (202) 482–4474, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 8, 2022, Commerce published the *Preliminary Results* for this review in the **Federal Register** and invited interested parties to comment on those results.[1] Between August 17 and 24, 2022, Commerce received case briefs on behalf of Cambria Company LLC (the petitioner), Antique Group,[2] Arizona Tile *et al.,*[3] Architectural Surfaces Group, LLC, DSG *et al.,*[4] Federation of Indian Quartz Surface Industry (the Federation), GlobalFair Technologies Pvt., and Jessie-Kan *et al.*[5] [6] Subsequently, the petitioner, Arizona Tile *et al.,* the Federation, and Pokarna Engineered Stone Limited (PESL) each submitted rebuttal briefs on August 25, 2022.[7] In addition, between August 15 and 17, 2022, certain other parties filed letters in lieu of case briefs.[8]

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[1] *See Certain Quartz Surface Products from India: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2019–2021,* 87 FR 40786 (July 8, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] Antique Marbonite Private Limited, India; Shivam Enterprises and Prism Johnson Limited (collectively, Antique Group).

[3] Arizona Tile, M S International, Inc. and PNS Clearance LLC (collectively, Arizona Tile *et al.*).

[4] DivyaShakti Granites Limited, DivyaShakti Limited, Quartzkraft LLP,Marudhar Rocks International Pvt. Ltd, International Stones India Pvt. Ltd, Aro Granite Industries, Ltd, Paradigm Granite Pvt., Ltd and Paradigm Stone India Pvt. Ltd., Indian Exporters and Producers, and U.S. Importers Cosmos Granite (West) LLC, Cosmos Granite (South East) LLC, Cosmos Granite (South West) LLC, Dwyer Marble & Stone, and OHM International (collectively, DSG *et al.*).

[5] Jessie-Kan Granite Incorporated, Hilltop Stones Pvt. Ltd. and Colors of Rainbow; and Jessie-Kan Granite Inc. (collectively, Jessie-Kan *et al.*).

[6] *See* Memorandum, ''Certain Quartz Surface Products from India: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review; 2019–2021,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[7] Id.

[8] Id.

Commerce extended the deadline for the final results on October 14, 2022, by 31 days and on November 30, 2022, by 29 days.[9] The deadline for the final results of this review is now January 4, 2023. For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[10]

Scope of the Order [11]

The products covered by the *Order* are QSP from India. For a complete description of the scope, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum is attached at Appendix I to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties regarding the *Preliminary Results,* we made certain changes to the margin calculation for PESL, as well as the selection of the rate for non-selected companies. For a discussion of these changes, *see* the Issues and Decision Memorandum.[12]

Use of Adverse Facts Available

We continue to find that the application of facts available with an adverse inference (AFA), pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), is warranted in determining Antique Group's dumping margin because it failed to cooperate to the best of its ability.[13] Therefore, as in the *Preliminary Results,* as AFA, we assigned Antique Group a dumping margin of 323.12 percent. *See* the Issues and Decision Memorandum for further discussion.[14]

Rates for Companies Not Selected for Individual Examination

The statute and Commerce's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for companies which we did not examine in an administrative review.

When the rates for individually examined companies are all zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method'' to establish the all-others rate.

We calculated a zero percent dumping margin for one of the mandatory respondents in this review, PESL, and we based the dumping margin on facts available with an adverse inference for the other mandatory respondent, Antique Group. Upon further review, Commerce has determined that a reasonable method to establish the rate for the 51 non-selected companies subject to this administrative review is by relying on the all-others rate calculated in the initial investigation of this *Order,*[15] consistent with the guidance in section 735(c)(5)(B) of the Act.[16] These 51 exporters are listed in Appendix II. For additional discussion, *see* the Issues and Decision Memorandum.

Final Results of Review

Commerce determines that the following weighted-average dumping margins exist for the period December 13, 2019, through May 31, 2021:

Producer and/or exporter	Weighted-average dumping margin (percent)
Pokarna Engineered Stone Limited	0.00
Antique Marbonite Private Limited, India/Shivam Enterprises (Shivam)/Prism Johnson Limited (Prism Johnson)	323.12
Non-Selected Companies	3.19

Assessment Rate

Pursuant to section 751(a)(2)(A) of the Act, and 19 CFR 351.212(b)(1), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Pursuant to 19 CFR 351.212(b)(1), for PESL, we calculated importer-specific antidumping duty assessment rates by aggregating the total amount of dumping calculated for the examined sales of each importer and dividing each of these amounts by the total entered value associated with those sales. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. Commerce's ''automatic assessment'' will apply to entries of subject merchandise during the POR produced by PESL for which it did not know that the merchandise it sold to an intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Because we are applying total AFA to Antique Group, we will instruct CBP to apply an assessment rate to all entries Antique Group produced and/or exported equal to the dumping margin indicated above in the ''Final Results of Review.'' Further, the assessment rate for antidumping duties for each of the companies not selected for individual

[9] *See* Memoranda, ''Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review, 2019–2021,'' dated October 14, 2022; and ''Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review, 2019–2021,'' dated November 30, 2022.

[10] *See* Issues and Decision Memorandum.

[11] *See Certain Quartz Surface Products from India and Turkey: Antidumping Duty Orders,* 85 FR 37422 (June 22, 2020) (*Order*).

[12] *See* Issues and Decision Memorandum at Comments 1 and 5.

[13] *See Preliminary Results.*

[14] *See* Issues and Decision Memorandum at Comment 4.

[15] *See Certain Quartz Surface Products from India: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances,* 85 FR 25391, 25392 (May 1, 2020) (*Final Determination*); *see also* Issues and Decision Memorandum at Comment 5.

[16] *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part,* 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

examination will be equal to the weighted-average dumping margin identified above in the ''Final Results of Review.''

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rates for the companies identified above in the ''Final Results of Review'' section will be equal to the company-specific weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by a company not covered in this administrative review but covered in a completed prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review or completed prior segment of this proceeding but the producer is, the cash deposit rate will be the company-specific rate established for the most recently-completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 1.02 percent, the rate established in the investigation of this proceeding.[17] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties has occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5) and 19 CFR 351.213(h)(1).

Dated: December 30, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
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IV. Changes Since the *Preliminary Results*
V. Discussion of the Issues
  Comment 1: Source of PESL's Constructed Value (CV) Information
  Comment 2: Whether Commerce Should Accept Antique Group's Supplemental Questionnaire Response
  Comment 3: Whether Commerce Should Continue to Apply AFA to Antique Group
  Comment 4: Whether Commerce Should Continue to Rely on the Petition Rate for the AFA Rate
  Comment 5: Whether Commerce Should Rely on a Different Method for Selecting the Non-Selected Company Rate
  Comment 6: Changes to Preliminary Draft Customs Instructions
VI. Recommendation

Appendix II

List of Companies Not Selected for Individual Examination

Alicante Surfaces Pvt., Ltd.
Antique Granito Shareholders Trust
Argil Ceramic Private Limited
ARO Granite Industries Limited
Asian Granito India Ltd
Baba Super Minerals Pvt. Ltd.
Camrola Quartz Limited
Chaitanya International Minerals LLP
Chariot International Pvt. Ltd.
Colors Of Rainbow
Creative Quartz LLP
Cuarzo
Divyashakti Granites Limited
Esprit Stones Pvt., Ltd.
Globalfair Technologies Pvt.
Glowstone Industries Private Limited
Gupta Marbles
Gyan Chand Lodha
Hi Elite Quartz LLP
Hilltop Stones Pvt., Ltd.
Inani Marbles and Industries Ltd.
International Stones India Private Limited
Jennex Granite Industries
Jessie Kan Granite Inc.
Keros Stone LLP
M.B. Granites Private Ltd.
Mahi Granites Private Limited.
Malbros Marbles & Granites Industries
Marudhar Rocks International Pvt. Ltd.
Mountmine Imp. & Exp. Pvt., Ltd.
P.M. Quartz Surfaces Pvt., Ltd.
Pacific Industries Limited
Pacific Quartz Surfaces LLP
Pangaea Stone International Private Ltd.
Paradigm Granite Pvt., Ltd.
Paradigm Stone India Private Limited
Pelican Quartz Stone
Quartzkraft LLP
Rocks Forever
Rose Marbles Ltd.
Safayar Ceramics Private Ltd.
Satya Exports
Southern Rocks and Minerals Private Limited
Stone Imp. & Exp. (India) Pvt., Ltd.
Stoneby India LLP
Sunex Stones Private Ltd.
Tab India Granites Pvt., Ltd.
Ultima International
Vishwas Ceramic
Vishwas Exp.
Yash Gems

[FR Doc. 2023–00149 Filed 1–6–23; 8:45 am]

BILLING CODE 3510–DS–P

[17] *See Final Determination,* 85 FR at 25392.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC562]

Nominations for the Western and Central Pacific Fisheries Commission Permanent Advisory Committee

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of request for nominations.

SUMMARY: NMFS, on behalf of the Secretary of Commerce, is seeking nominations for the advisory committee established under the Western and Central Pacific Fisheries Convention Implementation Act. The Permanent Advisory Committee, composed of individuals from groups concerned with the fisheries covered by the Western and Central Pacific Fisheries Convention (Convention), provides recommendations to the U.S. Commissioners to the Western and Central Pacific Fisheries Commission (Commission) regarding the deliberations and decisions of the Commission.

DATES: Nominations must be received no later than February 23, 2023.

Nominations received after the deadline will not be accepted.

ADDRESSES: Nominations should be directed to Sarah Malloy, Acting Regional Administrator, NMFS Pacific Islands Regional Office, and may be submitted by any of the following means:

- *Email: pir.wcpfc@noaa.gov.* Include in the subject line the following document identifier: ''Permanent Advisory Committee nominations.'' Email comments, including attachments, are limited to 5 megabytes.
- *Mail or hand delivery:* 1845 Wasp Boulevard, Bldg. 176, Honolulu, HI 96818.
- *Facsimile:* 808–725–5215.

FOR FURTHER INFORMATION CONTACT: Emily Reynolds, NMFS Pacific Islands Regional Office; telephone: 808–725–5039; facsimile: 808–725–5215; email: *emily.reynolds@noaa.gov.*

SUPPLEMENTARY INFORMATION:

The Convention and the Commission

The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean in accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS) and the Agreement for the Implementation of the Provisions of the UNCLOS Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. The Convention establishes the Commission, the secretariat of which is based in Pohnpei, Federated States of Micronesia.

The Convention applies to all highly migratory fish stocks (defined as all fish stocks of the species listed in Annex I of the UNCLOS occurring in the Convention Area, and such other species of fish as the Commission may determine), except sauries.

The United States actively supported the negotiations and the development of the Convention and signed the Convention when it was opened for signature in 2000. It participated as a cooperating non-member of the Commission since it became operational in 2005. The United States became a Contracting Party to the Convention and a full member of the Commission when it ratified the Convention in January 2007. Under the Act, the United States is to be represented on the Commission by five U.S. Commissioners, appointed by the President.

Permanent Advisory Committee

The Act at 16 U.S.C. 6902(d) provides that the Secretary of Commerce, in consultation with the U.S. Commissioners to the Commission, will appoint individuals as members of the advisory committee established under the Act, referred to here as the ''Permanent Advisory Committee.''

The appointed members of the Permanent Advisory Committee are to include not less than 15 nor more than 20 individuals selected from the various groups concerned with the fisheries covered by the Convention, providing, to the extent practicable, an equitable balance among such groups. On behalf of the Secretary of Commerce, NMFS is now seeking nominations for these appointments.

In addition to the 15–20 appointed members, the Permanent Advisory Committee includes the chair of the Western Pacific Fishery Management Council's Advisory Committee (or designee), and officials of the fisheries management authorities of American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (or their designees).

Members of the Permanent Advisory Committee will be invited to attend all non-executive meetings of the U.S. Commissioners to the Commission and at such meetings will be given opportunity to examine and be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission.

Each appointed member of the Permanent Advisory Committee will serve for a term of 2 years and is eligible for reappointment. This request for nominations is for the term to begin on August 3, 2023, and is for a term of 2 consecutive years.

The Secretaries of Commerce and State will furnish the Permanent Advisory Committee with relevant information concerning fisheries and international fishery agreements.

NMFS, on behalf of the Secretary of Commerce, will provide to the Permanent Advisory Committee administrative and technical support services as are necessary for its effective functioning.

Appointed members of the Permanent Advisory Committee will serve without pay, but while away from their homes or regular places of business in the performance of services for the advisory committee will be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under 5 U.S.C. 5703. They will not be considered Federal employees while performing service as members of the advisory committee except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5 and chapter 171 of title 28.

Procedure for Submitting Nominations

Nominations for the Permanent Advisory Committee should be submitted to NMFS (see **ADDRESSES**). This request for nominations is for first-time nominees as well as previous and current Permanent Advisory Committee members. Self-nominations are acceptable. Nominations should include the following information: (1) full name, address, telephone, and email address of nominee; (2) nominee's organization(s) or professional affiliation(s) serving as the basis for the nomination, if any; and (3) a background statement, not to exceed one page in length, describing the nominee's qualifications, experience and interests, specifically as related to the fisheries covered by the Convention.

Authority: 16 U.S.C. 6902.

Dated: January 4, 2023.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–00152 Filed 1–6–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC642]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a joint public meeting of its Monkfish Committee and Advisory Panel via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Monday, January 23, 2023, at 9 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/3033856474158556246.*

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director,

New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Committee and Advisory Panel will receive Scientific and Statistical Committee recommendations for monkfish acceptable biological catches as well as receive a progress update on developing 2023–25 specifications and effort controls (Days-At-Sea) for Framework Adjustment 13. They will review the preliminary impact analysis of alternatives and recommend final preferred alternatives to the Council as well as review RSA research priorities set by the NEFMC in June 2022 and recommend any revisions to be included in the potential issuance of a Request for Proposals by NOAA Fisheries. Other business may be discussed, as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 4, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–00161 Filed 1–6–23; 8:45 am]

BILLING CODE 4510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC652]

Peer Review Assessment for the Catch Accounting and Monitoring System (CAMS)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: NMFS will convene the Peer Review Assessment Meeting for the purpose of reviewing CAMS by an independent panel of stock assessment experts from the Center of Independent Experts (CIE). The public is invited to attend the presentations and discussions between the review panel and the scientists who have participated in the CAMS development process.

DATES: The public portion of the Peer Review Assessment Meeting will be held from January 17, 2023—January 19, 2023. The meeting will conclude on January 19, 2023 at 5 p.m. Eastern Standard Time. Please see **SUPPLEMENTARY INFORMATION** for the daily meeting agenda.

ADDRESSES: The meeting will be held via WebEx. Link: *https://noaanmfs-meets.webex.com/noaanmfs-meets/j.php?MTID=m3a2ba4dd6ba5b6a288cb12428f0ad3a0.*

Meeting number (access code): 2763 083 1360

Meeting password: XAub5WAXx78

FOR FURTHER INFORMATION CONTACT: David Gouveia, phone: (978) 281–9280; email: *david.gouveia@noaa.gov* and Michael Simpkins, phone: 774–392–4652; email: *michael.simpkins@noaa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please visit the CAMS Peer Review Event Page: *https://www.fisheries.noaa.gov/event/catch-accounting-and-monitoring-system-peer-review.*

Daily Meeting Agenda—Peer Review Assessment Meeting

All times are approximate Eastern Standard Time, and may be changed at the discretion of the review panel chair. The meeting is open to the public; however, during the report writing sessions we ask that the public refrain from engaging in discussion with the peer review panel.

Time	Topic	Presenter(s)	ToR
Tuesday, January 17, 2023			
11 a.m.–11:15 a.m	Welcome/Logistics Introductions/Agenda/Conduct of Meeting.	Mike Simpkins, David Gouveia, Cate O'Keefe.	
11:15 a.m.–11:30 a.m	Introductions	Cate O'Keefe.	
11:30 a.m.–12:30 p.m	High-level Overview	Chris Legault	1a.
12:30 p.m.–1:30 p.m	Data Sources and Processes	J. Michael Lanning	1a, 1b, 1c, 1e.
1:30 p.m.–2 p.m	Break.		
2 p.m.–2:45 p.m	Landings	Daniel Hocking	1a, 1b, 1c, 1e.
2:45 p.m.–3:30 p.m	Discards	Ben Galuardi	1a, 1b, 1c, 1e.
3:30 p.m.–3:45 p.m	Break.		
3:45 p.m.–4:45 p.m	Data Conflict Management	Chris Legault	1f.
4:45 p.m.–5 p.m	Public Comment	Cate O'Keefe.	
5 p.m	Adjourn.		
Wednesday, January 18, 2023			
11 a.m.–11:05 a.m	Welcome/Logistics	Cate O'Keefe.	
11:05 a.m.–11:20 a.m	Follow-up from Day 1	Cate O'Keefe, CIE Review Panel.	
11:20 a.m.–12:20 p.m	CAMS Stock Assessment Comparisons.	Chris Legault	1d, 1g.
12:20 p.m.–1:20 p.m	CAMS Quota Monitoring Comparisons.	Daniel Hocking, Ben Galuardi	1d, 1g.
1:20 p.m.–1:50 p.m	Break.		
1:50 p.m.–2:50 p.m	New Estimations	Daniel Hocking, Chris Legault	1a.

Time	Topic	Presenter(s)	ToR
2:50 p.m.–3:50 p.m	Operationalizing CAMS	J. Michael Lanning, Daniel Hocking	1g.
3:50 p.m.–4:05 p.m	Break.		
4:05 p.m.–4:45 p.m	TOR 1 Discussion	Cate O'Keefe, CIE Review Panel.	
4:45 p.m.–5 p.m	Public Comment	Cate O'Keefe..	
5 p.m	Adjourn.		
Thursday, January 19, 2023			
11 a.m.–11:05 a.m	Welcome/Logistics	Cate O'Keefe.	
11:05 a.m.–11:20 a.m	Follow-up from Day 2	Cate O'Keefe, CIE Review Panel.	
11:20 a.m.–1:20 p.m	Future of CAMS	Chris Legault, J. Michael Lanning	2a–h.
1:20 p.m.–1:50 p.m	Break.		
1:50 p.m.–3 p.m	Key Findings	Cate O'Keefe, CIE Review Panel	
3 p.m.–5 p.m.	Report Writing	Cate O'Keefe, CIE Review Panel	
5 p.m	Adjourn.		

The meeting is open to the public; however, during the 'Report Writing' session on Thursday, January 19, the public should not engage in discussion with the Peer Review Panel.

Special Accommodations

This meeting is physically accessible to people with disabilities. Special requests should be directed to David Gouveia and Michael Simpkins, via email.

Dated: January 4, 2023.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–00150 Filed 1–6–23; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 23–C0001]

Peloton Interactive, Inc.

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission publishes in the **Federal Register** any settlement that it provisionally accepts under the Consumer Product Safety Act. Published below is a provisionally accepted Settlement Agreement with Peloton Interactive, Inc. containing a civil penalty in the amount of $19,065,000, subject to the terms and conditions of the Settlement Agreement. The Commission voted unanimously (4–0) to provisionally accept the proposed Settlement Agreement and Order pertaining to Peloton Interactive, Inc.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by January 24, 2023.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to Comment 23–C0001, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (240) 863–8938 (mobile), (301) 504–7479 (office); email: *cpsc-os@cpsc.gov.*

FOR FURTHER INFORMATION CONTACT: Michael J. Rogal, Trial Attorney, Division of Enforcement and Litigation, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; *mrogal@cpsc.gov,* 301–504–7528 (office).

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: January 4, 2023.

Alberta E. Mills,

Secretary.

United States of America Consumer Product Safety Commission

In the Matter of: PELOTON INTERACTIVE, INC.

CPSC Docket No.: 23–C0001

Settlement Agreement

1. In accordance with the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA''), and 16 CFR 1118.20, Peloton Interactive, Inc. (''Peloton''), and the United States Consumer Product Safety Commission (''Commission''), through its staff, hereby enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order resolve staff's charges set forth below.

The Parties

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. 2051–2089. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 CFR 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. Peloton is a corporation, organized and existing under the laws of the state of Delaware, with its principal place of business in New York, New York.

Staff Charges

4. Between September 2018 and April 2021, Peloton imported to the United States, distributed and offered for sale approximately 125,000 Peloton Tread+ treadmills (Model No. TR01) (''Tread+ treadmills'' or ''Subject Products'').

5. The Subject Products are ''consumer products'' that were ''import[ed]'' and ''distribut[ed] in commerce,'' as those terms are defined or used in sections 3(a)(5), (7), and (9) of the CPSA, 15 U.S.C. 2052(a)(5), (7), and (9). Peloton is a ''distributor'' of the Subject Products, as such term is defined in section 3(a)(8) of the CPSA, 15 U.S.C. 2052(a)(8).

Violation of CPSA Section 19(a)(4)

6. The Tread+ treadmills contain a defect which could create a substantial product hazard or create an unreasonable risk of serious injury or death because adult users, children, pets and objects can be pulled under the rear of the treadmill, posing an entrapment hazard.

7. Beginning in December 2018 and continuing into 2019, Peloton received reports of incidents associated with pull

under and entrapment in the rear of the Subject Products, including reports of injuries.

8. During that time the Firm also began the process of relocating a warning label to the rear of the treadmill where the entrapment incidents were occurring, and evaluated the feasibility of a design change to add a rear guard to prevent entrapments.

9. Despite possessing information that reasonably supported the conclusion that the Subject Products contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death, Peloton did not immediately report to the Commission.

10. On March 3, 2021, Peloton received notice that a six-year-old child had died after being entrapped under the rear of the Tread+ treadmill.

11. On March 4, 2021, Peloton filed a report with the Commission under 15 U.S.C. 2064(b) concerning the Tread+ treadmills. By that time, there were more than 150 reports of persons, pets and/or objects being pulled under the rear of the Tread+ treadmill, including the death of a child and 13 injuries, including broken bones, lacerations, abrasions and friction burns.

12. Because Peloton's report failed to provide certain consumer contact information, the Commission was forced to issue a subpoena for this information.

13. On April 17, 2021, prior to the Firm's agreement to conduct a voluntary recall, the Commission issued a unilateral Health and Safety Notice warning consumers to stop using the Tread+.

14. The Commission and Peloton jointly announced the recall of the Tread+ treadmill on May 5, 2021.

Failure to Timely Report

15. Despite having information reasonably supporting the conclusion that the Subject Products contained a defect or created an unreasonable risk of serious injury or death, Peloton did not notify the Commission immediately of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3), (4), in violation of section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

16. Because the information in Peloton's possession about the Subject Products constituted actual and presumed knowledge, Peloton knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

17. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Peloton is subject to civil penalties for its knowing violation of section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

Violation of CPSA Section 19(a)(2)

18. Between May 5, 2021, after Peloton received notice that the voluntary corrective action was approved by the Commission, through August 2021, Peloton knowingly distributed into commerce 38 Tread+ treadmills (''Recalled Products'') that were subject to the recall by Peloton personnel and through third-party delivery firms to consumers.

19. The Recalled Products were subject to voluntary corrective action taken by Peloton in consultation with the Commission. Peloton knew of the voluntary corrective action taken for the Recalled Products.

20. The Recalled Products are ''consumer products,'' that were ''import[ed]'' and ''distribut[ed] in commerce,'' as those terms are defined or used in sections 3(a)(5), (7), and (9) of the CPSA, 15 U.S.C. 2052(a)(5), (7), and (9). Peloton is a ''distributor'' of the Subject Products, as such terms are defined in section 3(a)(8) of the CPSA, 15 U.S.C. 2052(a)(8).

21. Under CPSA section 19(a)(2)(B), 15 U.S.C. 2068(a)(2)(B), it is unlawful for any person to sell, offer for sale, manufacture for sale, distribute in commerce, or import into the United States, any consumer product that is subject to a voluntary corrective action taken by the manufacturer, in consultation with the Commission, of which the Commission has notified the public, or if the seller, distributor, or manufacturer knew, or should have known, of such voluntary corrective action.

22. Pursuant to section 20(a)(1) of the CPSA, 15 U.S.C. 2069(a)(1), any person who ''knowingly'' violates CPSA section 19 is subject to civil penalties. Under section 20(d) of the CPSA, 15 U.S.C. 2069(d), the term ''knowingly'' means: ''(1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.''

Response of Peloton

23. This agreement does not constitute an admission by Peloton to the staff's charges as set forth in paragraphs 4 through 22 above, including without limitation that the Subject Product contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death; that Peloton failed to notify the Commission in a timely matter in accordance with section 15(b) of the CPSA, 15 U.S.C. 2064(b); that Peloton distributed any Recalled Products in violation of section 19(a)(2)(B) of the CPSA; and that Peloton knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), or section 19(a)(2)(B) of the CPSA, 15 U.S.C. 2068(a)(2)(B), as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

24. Peloton enters into this Agreement to settle this matter and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings. Peloton does not admit that it violated the CPSA or any other law, and Peloton's willingness to enter into this Agreement and Order does not constitute, nor is it evidence of, an admission by Peloton of liability or violation of any law.

25. At all relevant times, Peloton had a product safety compliance program, which among other things, prohibited the distribution of recalled products. Peloton requested its third-party distribution partners pause deliveries prior to the recall announcement. Peloton notified the Commission in connection with the Subject Products on March 4, 2021 and voluntarily notified the Commission of the post-recall distribution of Tread+ units that Peloton identified through an internal review.

Agreement of the Parties

26. Under the CPSA, the Commission has jurisdiction over the matter involving the Subject Products and over Peloton.

27. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Peloton or a determination by the Commission that Peloton violated the CPSA.

28. In settlement of staff's charges, Peloton shall pay a civil penalty in the amount of nineteen million, sixty-five thousand dollars ($19,065,000) (''Total Civil Penalty Amount''). This includes a civil penalty of $16,025,000 for the CPSA section 19(a)(4) timeliness violation and a $3,040,000 civil penalty for the CPSA section 19(a)(2) distribution of recalled goods violation. The $19,065,000 Payment shall be paid within thirty (30) calendar days after receiving service of the Commission's final Order accepting the Agreement. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via *http://www.pay.gov,* for allocation to, and credit against, the payment obligations of Peloton under this Agreement. Failure to make such

payment by the date specified in the Commission's final Order shall constitute Default.

29. The Commission or the United States may seek enforcement for any breach of, or any failure to comply with, any provision of this Agreement and Order in United States District Court, to seek relief including, but not limited to, collecting amounts due.

30. All unpaid amounts, if any, due and owing under the Agreement, shall constitute a debt due and immediately owing by Peloton to the United States, and interest shall accrue and be paid by Peloton at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b) from the date of Default, until all amounts due have been paid in full (hereinafter ''Default Payment Amount'' and ''Default Interest Balance''). Peloton shall consent to a Consent Judgment in the amount of the Default Payment Amount and Default Interest Balance, and the United States, at its sole option, may collect the entire Default Payment Amount and Default Interest Balance, or exercise any other rights granted by law or in equity, including, but not limited to, referring such matters for private collection, and Peloton agrees not to contest, and hereby waives and discharges any defenses to, any collection action undertaken by the United States, or its agents or contractors, pursuant to this paragraph. Peloton shall pay the United States all reasonable costs of collection and enforcement under this paragraph, respectively, including reasonable attorney's fees and expenses.

31. After staff receives this Agreement executed on behalf of Peloton, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the **Federal Register**, in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date the Agreement is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

32. This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and it is subject to the provisions of 16 CFR 1118.20(h). Upon the later of: (i) Commission's final acceptance of this Agreement and service of the accepted Agreement upon Peloton, and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect, and shall be binding upon the parties.

33. Effective upon the later of: (1) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon Peloton and (2) and the date of issuance of the final Order, for good and valuable consideration, Peloton hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in this Agreement:

(i) an administrative or judicial hearing;

(ii) judicial review or other challenge or contest of the Commission's actions;

(iii) a determination by the Commission of whether Peloton failed to comply with the CPSA and the underlying regulations;

(iv) a statement of findings of fact and conclusions of law; and

(v) any claims under the Equal Access to Justice Act.

34. Peloton shall maintain an enhanced compliance program designed to ensure compliance with the CPSA with respect to any consumer product imported, manufactured, distributed or sold by Peloton, which shall contain the following elements:

(i) written standards, policies and procedures, including those designed to ensure that information that may relate to or impact CPSA compliance is conveyed effectively to personnel responsible for CPSA compliance, whether or not an injury has been reported;

(ii) procedures for reviewing claims and reports for safety concerns and for implementing corrective and preventive actions when compliance deficiencies or violations are identified;

(iii) procedures requiring that information required to be disclosed by Peloton to the Commission is recorded, processed, and reported in accordance with applicable law;

(iv) procedures requiring that all reporting made to the Commission is timely, truthful, complete, accurate, and in accordance with applicable law;

(v) procedures requiring that prompt disclosure is made to Peloton's management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to affect adversely, in any material respect, Peloton's ability to record, process and report to the Commission in accordance with applicable law;

(vi) procedures for the prompt identification, quarantine and disposition of recalled goods; including, but not limited to:

i. implementation and maintenance of stock keeping unit (SKU) blocks at points of sale, reinforced informational technology (IT) coverage for SKU blocks, and maintenance of SKU blocks of recalled products without a time limit;

ii. a product master database that consolidates all Peloton products;

iii. dissemination to stores and third-party delivery firms recall-related communications and a catalog of recalled product information; and

iv. labeling and quarantine of recalled products prior to disposition.

(vii) mechanisms to effectively communicate to all applicable Peloton employees, through training programs or other means, compliance-related company policies and procedures to prevent violations of the CPSA;

(viii) a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary;

(ix) Peloton's senior management responsibility for, and general board oversight of, CPSA compliance; and

(x) retention of all CPSA compliance-related records for at least five (5) years, and availability of such records to CPSC staff upon request.

35. Peloton shall submit a report under CPSA Section 16(b), sworn to under penalty of perjury:

(i) describing in detail its compliance program and internal controls and the actions Peloton has taken to comply with each subparagraph of paragraph 34;

(ii) affirming that during the reporting period Peloton has reviewed its compliance program and internal controls, including the actions referenced in subparagraph (i) of this paragraph, for effectiveness, and that it complies with each subparagraph of paragraph 34, or describing in detail any non-compliance with any such subparagraph; and

(iii) identifying any changes or modifications made during the reporting period to Peloton's compliance program or internal controls to ensure compliance with the terms of the CPSA and, in particular, the requirements of CPSA Section 15 related to timely reporting.

Such reports shall be submitted annually to the Director, Office of Compliance, Division of Enforcement and Litigation, for a period of five (5) years beginning 12 months after the Commission's Final Order of Acceptance of the Agreement. The first report shall be submitted 30 days after the close of the first 12-month reporting

period, and successive reports shall be due annually on the same date thereafter. Without limitation, Peloton acknowledges and agrees that failure to make such timely and accurate reports as required by this Agreement and Order may constitute a violation of Section 19(a)(3) of the CPSA and may subject the Firm to enforcement under section 22 of the CPSA.

36. Notwithstanding and in addition to the above, Peloton shall promptly provide written documentation of any changes or modifications to its compliance program or internal controls and procedures, including the effective dates of the changes or modifications thereto. Peloton shall cooperate fully and truthfully with staff and shall make available all non-privileged information and materials and personnel deemed necessary by staff to evaluate Peloton's compliance with the terms of the Agreement.

37. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order.

38. Peloton represents that the Agreement:

(i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever;

(ii) has been duly authorized; and

(iii) constitutes the valid and binding obligation of Peloton, enforceable against Peloton in accordance with its terms. The individuals signing the Agreement on behalf of Peloton represent and warrant that they are duly authorized by Peloton to execute the Agreement.

39. The signatories represent that they are authorized to execute this Agreement.

40. The Agreement is governed by the laws of the United States.

41. The Agreement and the Order shall apply to, and be binding upon, Peloton and each of its parents, successors, transferees, and assigns; and a violation of the Agreement or Order may subject Peloton, and each of its parents, successors, transferees, and assigns, to appropriate legal action.

42. The Agreement, any attachments, and the Order constitute the complete agreement between the parties on the subject matter contained therein.

43. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party, for that reason, in any subsequent dispute.

44. The Agreement may not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 CFR 1118.20(h). The Agreement may be executed in counterparts.

45. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Peloton agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

(Signatures on next page)

PELOTON INTERACTIVE, INC.
Dated: 12/8/22
By: /s/Barry McCarthy
Barry McCarthy, Peloton Interactive, Inc., CEO & President

Dated: 12/9/2022
By: /s/Erin M. Bosman
Erin M. Bosman, Morrison Foerster LLP, Counsel to Peloton Interactive, Inc.

U.S. CONSUMER PRODUCT SAFETY COMMISSION
Mary B. Murphy, Director
Leah Ippolito, Supervisory Attorney
Michael J. Rogal, Trial Attorney

Dated: 12/14/22
By: /s/Michael J. Rogal
Michael J. Rogal, Trial Attorney, Division of Enforcement and Litigation, Office of Compliance and Field Operations

United States of America Consumer Product Safety Commission

In the Matter of: PELOTON INTERACTIVE, INC.

CPSC Docket No.: 23–C0001

Order

Upon consideration of the Settlement Agreement entered into between Peloton Interactive, Inc. (''Peloton''), and the U.S. Consumer Product Safety Commission (''Commission'' or ''CPSC''), and the Commission having jurisdiction over the subject matter and over Peloton, and it appearing that the Settlement Agreement and the Order are in the public interest, the Settlement Agreement is incorporated by reference and it is:

Provisionally accepted and provisional Order issued on the 28th day of December, 2022.

By Order of the Commission.

/s/Alberta Mills
Alberta E. Mills,
Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2023–00146 Filed 1–6–23; 8:45 am]

BILLING CODE 6355–01–P

COUNCIL ON ENVIRONMENTAL QUALITY

[CEQ–2022–0005]

RIN 0331–AA06

National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change

AGENCY: Council on Environmental Quality.

ACTION: Notice of interim guidance; request for comments.

SUMMARY: The Council on Environmental Quality (CEQ) is issuing this interim guidance to assist agencies in analyzing greenhouse gas (GHG) and climate change effects of their proposed actions under the National Environmental Policy Act (NEPA). CEQ is issuing this guidance as interim guidance so that agencies may make use of it immediately while CEQ seeks public comment on the guidance. CEQ intends to either revise the guidance in response to public comments or finalize the interim guidance.

DATES: This interim guidance is effective immediately. CEQ invites interested persons to submit comments on or before March 10, 2023.

ADDRESSES: You may submit comments, identified by docket number CEQ–2022–0005, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–456–6546.
- *Mail:* Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20503.

All submissions received must include the agency name, ''Council on Environmental Quality,'' and the docket number, CEQ–2022–0005. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Do not submit electronically any information you consider to be private, Confidential Business Information (CBI), or other information, the disclosure of which is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Jomar Maldonado, Director for NEPA, 202–395–5750 or *Jomar.MaldonadoVazquez@ceq.eop.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Council on Environmental Quality (CEQ) issues this guidance to assist Federal agencies in their consideration of the effects of greenhouse gas (GHG) emissions [1] and climate change when evaluating proposed major Federal actions in accordance with the National Environmental Policy Act (NEPA) [2] and the CEQ Regulations Implementing the Procedural Provisions of NEPA (CEQ Regulations).[3] This guidance will facilitate compliance with existing NEPA requirements, improving the efficiency and consistency of reviews of proposed Federal actions for agencies, decision makers, project proponents, and the public.[4] This guidance provides Federal agencies a common approach for assessing their proposed actions, while recognizing each agency's unique circumstances and authorities.

The United States faces a profound climate crisis and there is little time left to avoid a dangerous—potentially catastrophic—climate trajectory. Climate change is a fundamental environmental issue, and its effects on the human environment fall squarely within NEPA's purview.[5] Major Federal actions may result in substantial GHG emissions or emissions reductions, so Federal leadership that is informed by sound analysis is crucial to addressing the climate crisis. Federal proposals may also be affected by climate change, so they should be designed in consideration of resilience and adaptation to a changing climate.[6] Climate change is a particularly complex challenge given its global nature and the inherent interrelationships among its sources and effects. Further, climate change raises environmental justice concerns because it will disproportionately and adversely affect human health and the environment in some communities, including communities of color, low-income communities, and Tribal Nations and Indigenous communities. Given the urgency of the climate crisis and NEPA's important role in providing critical information to decision makers and the public, NEPA reviews should quantify proposed actions' GHG emissions, place GHG emissions in appropriate context and disclose relevant GHG emissions and relevant climate impacts, and identify alternatives and mitigation measures to avoid or reduce GHG emissions. CEQ encourages agencies to mitigate GHG emissions associated with their proposed actions to the greatest extent possible, consistent with national, science-based GHG reduction policies established to avoid the worst impacts of climate change.[7]

As discussed in this guidance, when conducting climate change analyses in NEPA reviews, agencies should consider: (1) the potential effects of a proposed action on climate change, including by assessing both GHG emissions and reductions from the proposed action; and (2) the effects of climate change on a proposed action and its environmental impacts. Analyzing reasonably foreseeable climate effects in NEPA reviews [8] helps ensure that decisions are based on the best available science and account for the urgency of the climate crisis. Climate change analysis also enables agencies to evaluate reasonable alternatives and mitigation measures that could avoid or reduce potential climate change-related effects and help address mounting climate resilience and adaptation challenges.

Accurate and clear climate change analysis:

- Helps decision makers, stakeholders, and the public to identify and assess reasonable courses of action that will reduce GHG emissions and climate change effects;
- Enables agencies to make informed decisions to help meet applicable Federal, State, Tribal, regional, and local climate action goals; [9]
- Promotes climate change resilience and adaptation and prioritizes the national need to ensure climate-resilient infrastructure and operations, including by considering the reasonably foreseeable effects of climate change on infrastructure investments and the resources needed to protect such investments over their lifetime; [10]
- Protects national security by helping to identify and reduce climate change-related threats including potential resource conflicts, stresses to military operations and installations, and the potential for abrupt stressors; [11]
- Enables agencies to better understand and address the effects of climate change on vulnerable communities, thereby responding to environmental justice concerns and promoting resilience and adaptation;

[1] For purposes of this guidance, CEQ defines GHGs consistent with CEQ's *Federal Greenhouse Gas Accounting and Reporting Guidance* (Jan. 17, 2016), *https://www.sustainability.gov/pdfs/federal_ghg%20accounting_reporting-guidance.pdf* (carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, nitrogen trifluoride, and sulfur hexafluoride). Also, for purposes of this guidance, ''emissions'' includes release of stored GHGs as a result of land management activities affecting terrestrial GHG pools such as carbon stocks in forests and soils, as well as actions that affect the future changes in carbon stocks. To facilitate comparisons between emissions of the different GHGs, a common unit of measurement for GHGs is metric tons of CO_2 equivalent (mt CO_2-e).

[2] 42 U.S.C. 4321 *et seq.*

[3] 40 CFR parts 1500–1508.

[4] This guidance is not a rule or regulation, and the recommendations it contains may not apply to a particular situation based upon the individual facts and circumstances. This guidance does not change or substitute for any law, regulation, or other legally binding requirement, and is not legally enforceable. The use of non-mandatory language such as ''guidance,'' ''recommend,'' ''may,'' ''should,'' and ''can,'' describes CEQ policies and recommendations. The use of mandatory terminology such as ''must'' and ''required'' describes controlling requirements under the terms of NEPA and the CEQ regulations, but this document does not affect legally binding requirements.

[5] NEPA recognizes ''the profound impact of man's activity on the interrelations of all components of the natural environment . . . .'' 42 U.S.C. 4331(a). Among other things, it was enacted to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans. 42 U.S.C. 4321. *See also* 42 U.S.C. 4332(2)(F) (requiring all Federal agencies to ''recognize the worldwide and long-range character of environmental problems'').

[6] *See* 42 U.S.C. 4332(2)(A) (directing agencies to ensure the use of ''the environmental design arts'' in planning and decision making).

[7] *See* White House Fact Sheet, *President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target* (Apr. 22, 2021), *https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/; see also* Executive Order (E.O.) 14008, *Tackling the Climate Crisis at Home and Abroad,* 86 FR 7619 (Jan. 25, 2021), *https://www.federalregister.gov/d/2021-02177;* E.O. 14057, *Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability,* 86 FR 70935 (Dec. 13, 2021), *https://www.federalregister.gov/d/2021-27114.*

[8] The term ''NEPA review'' as used in this guidance includes the analysis, process, and documentation required under NEPA. While this document focuses on reviews conducted pursuant to NEPA, agencies should analyze GHG emissions and climate-resilient design issues early in the planning and development of proposed actions and projects under their substantive authorities.

[9] For example, the United States has set an economy-wide target of reducing its net GHG emissions by 50 to 52 percent below 2005 levels in 2030. *See* United Nations Framework Convention on Climate Change (UNFCC), U.S. Nationally Determined Contribution (Apr. 20, 2021), *https://unfccc.int/NDCREG.*

[10] Resilience is a priority for Federal agency actions. *See, e.g.,* E.O. 14057, *supra* note 7; *see also* E.O. 14008, *supra* note 7.

[11] *See, e.g.,* Nat'l Intel. Council, *Implications for U.S. National Security of Anticipated Climate Change* (Sept. 21, 2016), NIC WP 2016–01, *https://www.dni.gov/files/documents/Newsroom/Reports%20and%20Pubs/Implications_for_US_National_Security_of_Anticipated_Climate_Change.pdf; see also* Dep't of Def., Directive 4715.21, *Climate Change Adaptation and Resilience* (Jan. 14, 2016), *https://dod.defense.gov/Portals/1/Documents/pubs/471521p.pdf.*

• Supports the international leadership of the United States on climate issues; [12] and

• Enables agencies to better assess courses of action that will provide pollution reduction co-benefits and long-term cost savings and reduce litigation risk to Federal actions—including projects carried out pursuant to the Bipartisan Infrastructure Law [13] and the Inflation Reduction Act.[14]

This interim [15] GHG guidance, effective upon publication, builds upon and updates CEQ's 2016 *Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews (''2016 GHG Guidance'')*, highlighting best practices for analysis grounded in science and agency experience.[16] CEQ is issuing this guidance to provide for greater clarity and more consistency in how agencies address climate change in NEPA reviews. This guidance applies longstanding NEPA principles to the analysis of climate change effects, which are a well-recognized category of effects on the human environment requiring consideration under NEPA. In fact, Federal agencies have been analyzing climate change impacts and GHG emissions in NEPA documents for many years. CEQ intends the guidance to assist agencies in publicly disclosing and considering the reasonably foreseeable effects of their proposed actions. CEQ encourages agencies to integrate the climate and other environmental considerations described in this guidance early in their planning processes. CEQ will review any agency proposals for revised NEPA procedures, including any revision of existing categorical exclusions, in light of this guidance.[17]

II. Summary of Key Content

This guidance explains how agencies should apply NEPA principles and existing best practices to their climate change analyses by:

• Recommending that agencies leverage early planning processes to integrate GHG emissions and climate change considerations into the identification of proposed actions, reasonable alternatives (as well as the no-action alternative), and potential mitigation and resilience measures;

• Recommending that agencies quantify a proposed action's projected GHG emissions or reductions for the expected lifetime of the action, considering available data and GHG quantification tools that are suitable for the proposed action;

• Recommending that agencies use projected GHG emissions associated with proposed actions and their reasonable alternatives to help assess potential climate change effects;

• Recommending that agencies provide additional context for GHG emissions, including through the use of the best available social cost of GHG (SC–GHG) estimates, to translate climate impacts into the more accessible metric of dollars, allow decision makers and the public to make comparisons, help evaluate the significance of an action's climate change effects, and better understand the tradeoffs associated with an action and its alternatives;

• Discussing methods to appropriately analyze reasonably foreseeable direct, indirect, and cumulative GHG emissions;

• Guiding agencies in considering reasonable alternatives and mitigation measures, as well as addressing short- and long-term climate change effects;

• Advising agencies to use the best available information and science when assessing the potential future state of the affected environment in NEPA analyses and providing up to date examples of existing sources of scientific information;

• Recommending agencies use the information developed during the NEPA review to consider reasonable alternatives that would make the actions and affected communities more resilient to the effects of a changing climate;

• Outlining unique considerations for agencies analyzing biogenic carbon dioxide sources and carbon stocks [18] associated with land and resource management actions under NEPA;

• Advising agencies that the ''rule of reason'' inherent in NEPA and the CEQ Regulations should guide agencies in determining, based on their expertise and experience, how to consider an environmental effect and prepare an analysis based on the available information; and

• Reminding agencies to incorporate environmental justice considerations into their analyses of climate-related effects, consistent with Executive Orders 12898 and 14008.

III. Background

Consistent with NEPA, climate change analysis is a critical component of environmental reviews and integral to Federal agencies managing and addressing climate change.[19] Recognizing the increasing urgency of the climate crisis and advances in climate science and GHG analysis techniques, CEQ has clarified and updated its 2016 GHG guidance on particular components including basic updates to reflect developments in climate science, methods to provide context for the impacts associated with GHG emissions, analysis of indirect effects, programmatic approaches, and environmental justice considerations. This guidance is applicable to all Federal actions subject to NEPA, with a focus on those for which an environmental assessment or environmental impact statement is prepared.[20] This guidance does not—and cannot—expand the range of Federal agency actions that are subject to NEPA.[21]

[12] *See* 42 U.S.C. 4332(2)(F) (requiring all Federal agencies to ''recognize the worldwide and long-range character of environmental problems'').

[13] Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429.

[14] Public Law 117–169, 136 Stat. 1818.

[15] CEQ is issuing this guidance as interim guidance so that agencies may make use of it immediately while CEQ seeks public comment on the guidance. CEQ may revise the guidance in response to public comments or finalize the interim guidance at a later date.

[16] CEQ, Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews, 81 FR 51866 (Aug. 8, 2016), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/nepa_final_ghg_guidance.pdf*. On April 5, 2017, CEQ withdrew the final 2016 guidance, as directed by E.O. 13783. 82 FR 16576 (Apr. 5, 2017). On June 26, 2019, CEQ issued draft GHG guidance. 84 FR 30097 (June 26, 2019). CEQ rescinded this draft guidance on February 19, 2021, pursuant to E.O. 13990. 86 FR 10252 (Feb. 19, 2021). In addition, on April 20, 2022, CEQ issued a Final Rule for its ''Phase 1'' NEPA rulemaking. 87 FR 23453. CEQ will be proceeding with updates to the NEPA regulations as set forth in the 2022 Regulatory Agenda.

[17] *See* 40 CFR 1507.3. Agencies should review their policies and implementing procedures and revise them as necessary to ensure compliance with NEPA. Agency NEPA implementing procedures can be, but are not required to be, in the form of regulation. Section 1507.3 encourages agencies to publish explanatory guidance, and agencies also should consider whether any updates to explanatory guidance are necessary in light of this guidance.

[18] *See infra* section IV(I).

[19] This updated guidance is also consistent with E.O.s 13990, 14008, and 14057, which set forth commitments to address climate change; direct that Federal infrastructure investment reduce climate pollution; and that Federal permitting decisions consider the effects of GHG emissions and climate change. *See* E.O. 13990, 86 FR 7037 (Jan. 25, 2021); E.O. 14008, *supra* note 7; E.O. 14057, *supra* note 7.

[20] Notwithstanding this focus, where appropriate, agencies also should apply this guidance to consider climate impacts and GHG emissions in establishing new categorical exclusions (CEs) and extraordinary circumstances in their agency NEPA procedures. *See* 40 CFR 1507.3(e)(2)(ii); CEQ, Final Guidance for Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act, 75 FR 75628 (Dec. 6, 2010).

[21] *See* 40 CFR 1508.1(q).

A. NEPA

NEPA is designed to promote consideration of potential effects on the human environment [22] that would result from proposed Federal agency actions, and to provide the public and decision makers with useful information regarding reasonable alternatives [23] and mitigation measures to improve the environmental outcomes of Federal agency actions. NEPA encourages early planning, ensures that the environmental effects of proposed actions are considered before decisions are made, and informs the public of significant environmental effects of proposed Federal agency actions, promoting transparency and accountability.[24]

Agencies implement NEPA through one of three levels of analysis: a categorical exclusion (CE); an environmental assessment (EA); or an environmental impact statement (EIS). Agencies have discretion in how they tailor their individual NEPA reviews in consideration of this guidance, consistent with the CEQ Regulations and their respective implementing procedures and policies.[25] NEPA reviews should identify measures to avoid, minimize, or mitigate adverse effects of Federal agency actions.[26] Better analysis and informed decisions are the ultimate goal of the NEPA process.[27] Inherent in NEPA and the CEQ Regulations is a ''rule of reason'' that allows agencies to determine, based on their expertise and experience, how to consider an environmental effect and prepare an analysis based on the available information. The usefulness of that information to the decision-making process and the public, and the extent of the anticipated environmental consequences, are important factors to consider when applying that ''rule of reason.''

B. Climate Change

Climate change is a defining national and global environmental challenge of this time, threatening broad and potentially catastrophic impacts to the human environment. It is well established that rising global atmospheric GHG concentrations are substantially affecting the Earth's climate, and that the dramatic observed increases in GHG concentrations since 1750 are unequivocally caused by human activities including fossil fuel combustion.[28] CEQ's first Annual Report in 1970 discussed the various ways that human-driven actions were understood to potentially alter global temperatures and weather patterns.[29] At that time, the mean level of atmospheric carbon dioxide (CO_2) had been measured as increasing to 325 parts per million (ppm) from a pre-Industrial average of 280 ppm.[30] Since 1970, the global average concentration of atmospheric CO_2 has increased to 414.21 ppm as of 2021, setting a new record high.[31] Methane is a potent GHG; over a 100-year period, the emissions of a ton of methane contribute 28 to 36 times as much to global warming as a ton of carbon dioxide. Over a 20-year timeframe, methane is about 84 times as potent as carbon dioxide.[32] Concentrations of methane (CH_4), have more than doubled from pre-Industrial levels.[33] Methane concentrations continue to grow rapidly.[34] Concentrations of other GHGs have similarly continued to grow, including nitrous oxide (N_2O) and hydrofluorocarbons (HFC).[35] Since the publication of CEQ's first Annual Report, human activities have caused the carbon dioxide content of the atmosphere of our planet to increase to

[22] 42 U.S.C. 4331(a) (''[R]ecognizing the profound impact of [human] activity on the interrelations of all components of the natural environment . . . .'').

[23] 40 CFR 1501.9(e)(2) (''Alternatives, which include the no action alternative; other reasonable courses of action; and mitigation measures (not in the proposed action).'').

[24] *See* 42 U.S.C. 4332 and 40 CFR 1501.2.

[25] *See* 40 CFR 1502.23 (methodology and scientific accuracy).

[26] 40 CFR 1505.2(a)(3).

[27] 40 CFR 1500.1(a) (''NEPA's purpose is . . . to provide for informed decision making and foster excellent action.'').

[28] *See, e.g.,* Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2021: The Physical Science Basis* (''The Physical Science Basis''), *Summary for Policymakers,* SPM–5 (Aug. 7, 2021), *https://www.ipcc.ch/report/ar6/wg1/chapter/summary-for-policymakers/* (''Observed increases in well-mixed greenhouse gas (GHG) concentrations since around 1750 are unequivocally caused by human activities''); *see also id., Technical Summary,* TS–45, *https://www.ipcc.ch/report/ar6/wg1/chapter/technical-summary/;* United States Global Change Research Program (''USGCRP''), *Fourth National Climate Assessment* (''Fourth National Climate Assessment''), *Volume II: Impacts, Risks, and Adaptation in the United States,* 76 (2018), *https://nca2018.globalchange.gov/* (''Many lines of evidence demonstrate that human activities, especially emissions of greenhouse gases from fossil fuel combustion, deforestation, and land-use change, are primarily responsible for the climate changes observed in the industrial era, especially over the last six decades''); IPCC, *Climate Change 2014 Synthesis Report,* 46 (2014), *https://www.ipcc.ch/site/assets/uploads/2018/05/SYR_AR5_FINAL_full_wcover.pdf* (''Emissions of CO_2 from fossil fuel combustion and industrial processes contributed about 78% of the total GHG emissions increase from 1970 to 2010, with a similar percentage contribution for the increase during the period 2000 to 2010 (high confidence).''). These conclusions are built upon a robust scientific record that has been created with substantial contributions from the USGCRP, which informs the United States' response to global climate change through coordinated Federal programs of research, education, communication, and decision support. *See* section 103, Public Law 101–606, 104 Stat. 3096. For additional information on the USGCRP, visit *http://www.globalchange.gov.* The USGCRP, formerly the Climate Change Science Program, coordinates and integrates the activities of 13 Federal agencies that conduct research on changes in the global environment and their implications for society. The USGCRP began as a Presidential initiative in 1989 and was codified in the Global Change Research Act of 1990 (Pub. L. 101–606). USGCRP-participating agencies are the Departments of Agriculture, Commerce, Defense, Energy, the Interior, Health and Human Services, State, and Transportation; the U.S. Agency for International Development, the Environmental Protection Agency, NASA, the National Science Foundation, and the Smithsonian Institution.

[29] *See* CEQ, *Environmental Quality: The First Annual Report,* 93 (Aug. 1970), *https://ceq.doe.gov/ceq-reports/annual_environmental_quality_reports.html.*

[30] *See* USGCRP, *Climate Change Impacts in the United States: The Third National Climate Assessment, Appendix 3: Climate Science Supplement,* 739 (J.M. Melillo et al. eds., 2014) (''Third National Climate Assessment''), U.S. Env't Protection Agency (EPA), EPA 430–R–15–004, *Inventory of U.S. Greenhouse Gas Emissions and Sinks, 1990–2013* (Apr. 2015), *https://www.epa.gov/sites/default/files/2015-12/documents/us-ghg-inventory-2015-main-text.pdf; see also* D.L. Hartmann et al., *Observations: Atmosphere and Surface, in Climate Change 2013: The Physical Science Basis.* Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (T.F. Stocker et al. eds., Cambridge Univ. Press 2013), *https://archive.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5_Chapter02_FINAL.pdf.*

[31] Nat'l Oceanic and Atmospheric Admin. (NOAA), *Climate Change: Atmospheric Carbon Dioxide* (June 23, 2022), *https://www.climate.gov/news-features/understanding-climate/climate-change-atmospheric-carbon-dioxide.*

[32] Although there are different ways to weight methane compared to carbon dioxide, the U.S. nationally determined contribution (NDC) under the Paris Agreement uses the 100-year GWP from the IPCC's Fifth Assessment Report. *See* IPCC, *Climate Change 2014 Synthesis Report, supra* note 28, at 5. To avoid potential ambiguity, CEQ encourages agencies to use the 100-year GWP when disclosing the GHG emissions impact from an action in their NEPA documents.

[33] *See* EPA, Proposed Rule on Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 86 FR 63110, 63114 (Nov. 15, 2021), *https://www.federalregister.gov/d/2021-24202; see also* Climate and Clean Air Coalition and United Nations Environment Programme (UNEP), *Global Methane Assessment,* 18 (2021), *https://www.ccacoalition.org/en/resources/global-methane-assessment-full-report;* USGCRP, Fourth National Climate Assessment, *supra* note 28, Volume I, 82. Methane emissions are responsible for about 20 percent of climate forcing globally. *See* California Air Resources Board, *Short-Lived Climate Pollutant Reduction Strategy,* 7 (Mar. 2017), *https://ww2.arb.ca.gov/sites/default/files/2020-07/final_SLCP_strategy.pdf.*

[34] *See, e.g.,* NOAA, *Increase in atmospheric methane set another record during 2021* (Apr. 7, 2022), *https://www.noaa.gov/news-release/increase-in-atmospheric-methane-set-another-record-during-2021.*

[35] *See* USGCRP, Fourth National Climate Assessment, *supra* note 28, Volume I, 81 (Figure 2.5).

its highest level in at least 800,000 years.[36]

Rising GHG levels are causing corresponding increases in average global temperatures and in the frequency and severity of natural disasters including storms, flooding, and wildfires.[37] Even if the United States and the world meet ambitious decarbonization targets, those trends will continue for many years, adversely affecting critical components of the human environment, including water availability, ocean acidity, sea-level rise, ecosystem functions, biodiversity, energy production, energy transmission and distribution, agriculture and food security, air quality, and human health.[38]

Based primarily on the scientific assessments of the U.S. Global Change Research Program (USGCRP), the National Research Council, and the Intergovernmental Panel on Climate Change (IPCC), in 2009 the Environmental Protection Agency (EPA) issued a finding that declared that the changes in our climate caused by elevated concentrations of GHGs in the atmosphere are reasonably anticipated to endanger the public health and welfare of current and future generations.[39] Since then, EPA has acknowledged more recent scientific assessments that highlight the urgency of addressing the rising concentration of GHGs in the atmosphere[40] and has found that certain communities, including communities of color, low-income communities, Tribal Nations and Indigenous communities, are especially vulnerable to climate-related effects.[41] Climate change also is likely to increase a community's vulnerability to other environmental impacts, further exacerbating environmental justice concerns. The effects of climate change observed to date and projected to occur in the future include more frequent and intense heat waves, longer fire seasons and more severe wildfires, degraded air quality, increased drought, greater sea-level rise, an increase in the intensity and frequency of extreme weather events, harm to water resources, harm to agriculture, ocean acidification, and harm to wildlife and ecosystems.[42] The IPCC Assessment Report reinforces these findings by providing scientific evidence of the impacts of climate change driven by human-induced GHG emissions, on our ecosystems, infrastructure, human health, and socioeconomic makeup.[43] Moreover, the effects of climate change are likely to fall disproportionately on vulnerable communities, including communities of color, low-income communities and Tribal Nations and Indigenous communities with environmental justice concerns.[44]

IV. Quantifying, Disclosing, and Contextualizing Climate Impacts, and Addressing the Potential Climate Change Effects of Proposed Federal Actions

Consistent with section 102(2)(C) of NEPA, Federal agencies must disclose and consider the reasonably foreseeable effects of their proposed actions including the extent to which a proposed action and its reasonable alternatives (including the no action alternative) would result in reasonably foreseeable GHG emissions that contribute to climate change. Federal agencies also should consider the ways in which a changing climate may impact the proposed action and its reasonable alternatives, and change the action's environmental effects over the lifetime of those effects.

This guidance is intended to assist agencies in disclosing and considering the effects of GHG emissions and climate change. This guidance does not establish any particular quantity of GHG emissions as ''significantly'' affecting the quality of the human environment. However, quantifying a proposed action's reasonably foreseeable GHG emissions whenever possible, and placing those emissions in appropriate context are important components of analyzing a proposed action's reasonably foreseeable climate change effects.

This section of the guidance identifies and explains the following steps agencies should take when analyzing a proposed action's climate change effects under NEPA:

(1) Quantify the reasonably foreseeable GHG emissions (including direct and indirect emissions) of a proposed action, the no action alternative, and any reasonable alternatives as discussed in Section IV(A) below.

[36] *See* Nat'l Aeronautics and Space Admin. (NASA) Earth Observatory, *The Carbon Cycle* (June 16, 2011), *http://earthobservatory.nasa.gov/Features/CarbonCycle;* Univ. of Cal. Riverside, NASA, and Riverside Unified School District, *Down to Earth Climate Change, http://globalclimate.ucr.edu/resources.html;* USGCRP, Fourth National Climate Assessment, *supra* note 28, Volume II, 1454.

[37] *See* IPCC, *Climate Change 2022: Impacts, Adaptation, and Vulnerability* (''Climate Change 2022''), *Summary for Policymakers,* 8 (H.-O. Pörtner et al. eds., 2022), *https://www.ipcc.ch/report/sixth-assessment-report-working-group-ii/;* USGCRP, Fourth National Climate Assessment, *supra* note 28, Climate Science Special Report, Chapter 7, 207, *https://science2017.globalchange.gov/downloads/CSSR_Ch7_Precipitation.pdf;* NOAA, *Climate Change Increased Chances of Record Rains in Louisiana by at Least 40 Percent* (Sept. 7, 2016, *https://www.noaa.gov/media-release/climate-change-increased-chances-of-record-rains-in-louisiana-by-at-least-40-percent.*

[38] *See* USGCRP, Fourth National Climate Assessment, *supra* note 28; IPCC, *Special Report on the Ocean and Cryosphere in a Changing Climate,* (H.-O. Portner et al., eds., 2019), *https://www.ipcc.ch/srocc/;* IPCC, *Special Report on Climate Change and Land,* (P.R. Shukla et al., eds., 2019), *https://www.ipcc.ch/srccl/; see also* USGCRP, *http://www.globalchange.gov;* 40 CFR 1508.1(g)(4) (''effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health'' effects); USGCRP, *The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment* (2016), *https://health2016.globalchange.gov/.*

[39] *See generally* EPA, Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Rule, 74 FR 66496 (Dec. 15, 2009) (noting, for example, ''[t]he evidence concerning how human-induced climate change may alter extreme weather events also clearly supports a finding of endangerment, given the serious adverse impacts that can result from such events and the increase in risk, even if small, of the occurrence and intensity of events such as hurricanes and floods. Additionally, public health is expected to be adversely affected by an increase in the severity of coastal storm events due to rising sea levels,'' *id.* at 66497–98).

[40] See EPA, Final Rule for Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act, 86 FR 55124 (Oct. 5, 2021), *https://www.federalregister.gov/d/2021-21030.*

[41] *See* EPA, *Final Rule for Carbon Pollution Emission Guidelines for Existing Stationary Sources Electric Utility Generating Units,* 80 FR 64661, 64647 (Oct. 23, 2015), *https://www.federalregister.gov/d/2015-22842* (''[c]ertain groups, including children, the elderly, and the poor, are most vulnerable to climate-related effects.'' Recent studies also find that certain communities, including low-income communities and some communities of color . . . are disproportionately affected by certain climate change related impacts—including heat waves, degraded air quality, and extreme weather events—which are associated with increased deaths, illnesses, and economic challenges. Studies also find that climate change poses particular threats to the health, well-being, and ways of life of indigenous peoples in the U.S.); *see also* EPA, EPA 430–R–21–003, *Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts* (''Six Impacts'') (Sept. 2021), *https://www.epa.gov/system/files/documents/2021-09/climate-vulnerability_september-2021_508.pdf.*

[42] *See* 80 FR 64647, *supra* note 41; *see also* USGCRP, Fourth National Climate Assessment, *supra* note 28, Volume II, Chapters 2–12 (Sectors) and Chapters 18–27 (Regions); Thomas R. Knutson et. al., *Global Projections of Intense Tropical Cyclone Activity for the Late Twenty-First Century from Dynamical Downscaling of CMIP5/RCP4.5 Scenarios,* 7221 (Sep. 15, 2015), *https://journals.ametsoc.org/view/journals/clim/28/18/jcli-d-15-0129.1.xml;* Ashley E. Payne et. al., *Responses and Impacts of Atmospheric Rivers to Climate Change,* 143, 154 (Mar. 9, 2020), *https://www.nature.com/articles/s43017-020-0030-5;* IPCC, *Climate Change 2022, supra* note 37; IPCC, *Special Report on Climate Change and Land, supra* note 38, at 270–72; U.S. Nat'l Park Service (NPS), *Wildlife and Climate Change* (last updated Dec. 8, 2021), *https://www.nps.gov/articles/000/wildlife-climateimpact.htm.*

[43] See IPCC, *Climate Change 2022,* supra note 37, *Summary for Policymakers.*

[44] See, *e.g.,* EPA, Six Impacts, supra note 41.

(2) Disclose and provide context for the GHG emissions and climate impacts associated with a proposed action and alternatives, including by, as relevant, monetizing climate damages using estimates of the SC–GHG, placing emissions in the context of relevant climate action goals and commitments, and providing common equivalents, as described below in Section IV(B).

(3) Analyze reasonable alternatives, including those that would reduce GHG emissions relative to baseline conditions, and identify available mitigation measures to avoid, minimize, or compensate for climate effects.

A. Quantifying a Proposed Action's GHG Emissions

To ensure that Federal agencies consider the incremental contribution of their actions to climate change, agencies should quantify the reasonably foreseeable direct and indirect GHG emissions of their proposed actions and reasonable alternatives (as well as the no-action alternative) and provide additional context to describe the effects associated with those projected emissions in NEPA analysis.[45]

Climate change results from an increase in atmospheric GHG concentrations from the incremental addition of GHG emissions from a vast multitude of individual sources.[46] The totality of climate change impacts is not attributable to any single action, but is exacerbated by a series of actions including actions taken pursuant to decisions of the Federal Government. Therefore, it is crucial for the Federal Government to analyze and consider the potential climate change effects of its proposed actions.[47]

NEPA requires more than a statement that emissions from a proposed Federal action or its alternatives represent only a small fraction of global or domestic emissions. Such a statement merely notes the nature of the climate change challenge, and is not a useful basis for deciding whether or to what extent to consider climate change effects under NEPA. Moreover, such comparisons and fractions also are not an appropriate method for characterizing the extent of a proposed action's and its alternatives' contributions to climate change because this approach does not reveal anything beyond the nature of the climate change challenge itself—the fact that diverse individual sources of emissions each make a relatively small addition to global atmospheric GHG concentrations that collectively have a large effect.

Therefore, when considering GHG emissions and their significance, agencies should use appropriate tools and methodologies to quantify GHG emissions, compare GHG emission quantities across alternative scenarios (including the no action alternative), and place emissions in relevant context, including how they relate to climate action commitments and goals. This approach allows an agency to present the environmental and public health effects of a proposed action in clear terms and with sufficient information to make a reasoned choice between no action and other alternatives and appropriate mitigation measures. This approach will also ensure the professional and scientific integrity of the NEPA review.[48]

As part of the NEPA documents they prepare, agencies should quantify the reasonably foreseeable gross GHG emissions increases and gross GHG emission reductions[49] for the proposed action, no action alternative, and any reasonable alternatives over their projected lifetime, using reasonably available information and data.[50] Agencies generally should quantify gross emissions increases or reductions (including both direct and indirect emissions) individually by GHG, as well as aggregated in terms of total CO_2 equivalence[51] by factoring in each pollutant's global warming potential (GWP), using the best available science and data.[52] Agencies also should quantify proposed actions' total net GHG emissions or reductions[53] (both by pollutant and by total CO_2-equivalent emissions) relative to baseline conditions.[54] To facilitate readability, agencies should include an overview of this information in the summary sections of EISs and, when relevant, in the summary section of EAs. Agencies also may use visual tools, such as charts and figures, to help readers more easily comprehend emissions data and compare emissions across alternatives.

Where feasible, agencies should also present annual GHG emission increases or reductions. This is particularly important where a proposed action presents both reasonably foreseeable GHG emission increases and GHG emission reductions. The agency generally should present annual GHG emissions increases or reductions, as well as net GHG emissions over the projected lifetime of the action, consistent with existing best practices.[55] Agencies should be guided by a rule of reason and the concept of proportionality in undertaking this analysis, particularly for proposed actions with net beneficial climate effects, as described below.

Quantification and assessment tools are widely available and are already in broad use in the Federal Government and private sector, by state and local governments, and globally. CEQ maintains a GHG Accounting Tools website listing many such tools.[56] These tools are designed to assist agencies, institutions, organizations, and companies that have different levels of

[45] *See* 40 CFR 1502.16.

[46] Some sources emit GHGs in quantities that are orders of magnitude greater than others. *See* EPA, *Greenhouse Gas Reporting Program, 2021 Reported Data,* Figure 1: Direct GHG Emissions Reported by Sector (2021), *https://www.epa.gov/ghgreporting/ghgrp-reported-data* (showing amounts of GHG emissions by sector).

[47] In addition to NEPA's requirement to describe the environmental impacts of the proposed action and any adverse environmental effects that cannot be avoided should the proposal be implemented, 42 U.S.C. 4332(2)(C)), NEPA also articulates a policy to use all practicable means and measures ''to foster and promote the general welfare, to create and maintain conditions under which [humans] and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans,'' including by ''attain[ing] the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.'' 42 U.S.C. 4331(a)–(b).

[48] *See* 40 CFR 1502.23 (requiring agencies to ensure the professional and scientific integrity of the discussions and analyses in environmental impact statements).

[49] Note that agencies should be guided by a rule of reason and the concept of proportionality in undertaking this analysis, particularly for proposed actions with net beneficial climate effects, as described in Section IV(A).

[50] *See, e.g., Sierra Club* v. *Fed. Energy Regul. Comm'n,* 867 F.3d 1357, 1374 (D.C. Cir. 2017); *San Juan Citizens Alliance* v. *Bureau of Land Mgmt.,* 326 F. Supp. 3d 1227, 1241–44 (D.N.M. 2018); *see generally Scientists' Inst. for Pub. Info., Inc.* v. *Atomic Energy Comm'n,* 481 F.2d 1079, 1092 (D.C. Cir 1973) (''Reasonable forecasting and speculation is thus implicit in NEPA, and we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as 'crystal ball inquiry.' '').

[51] This is typically expressed in metric tons of CO_2 equivalent, or mt CO_2-e.

[52] As discussed above, methane is a potent GHG. *See supra* note 32.

[53] Net emissions can be calculated by totaling gross emissions (all reasonably foreseeable direct and indirect GHG emissions from the proposed action) and subtracting any gross emissions reductions from the proposed action, such as renewable energy generation that will displace more carbon intensive energy sources or the addition of carbon sinks. The resulting net value may be either a net increase in total GHG emissions or a net decrease in emissions. In rare circumstances, agencies should consider whether a significant delay between increased emissions and decreased emissions could undermine the value of a net emissions calculation as a metric of climate impact.

[54] *See infra* section IV(D).

[55] For example, certain types of actions may involve construction emissions in their first year or two, followed by operational emissions increases in a few years prior to achieving net emissions reductions in later years.

[56] *See* CEQ, *GHG Tools and Resources, https://ceq.doe.gov/guidance/ghg-tools-and-resources.html.*

technical sophistication, data availability, and GHG source profiles. Agencies should use tools that reflect the best available science and data. These tools can provide GHG emissions estimates, including emissions from fossil fuel combustion and carbon sequestration [57] for many of the sources and sinks potentially affected by proposed resource management actions.[58] When considering which tools to employ, it is important to consider the proposed action's temporal scale and the availability of input data.[59] Furthermore, agencies should seek to obtain the information needed to quantify GHG emissions, including by requesting or requiring information held by project applicants or by conducting modeling when relevant.

In the rare instance when an agency determines that tools, methodologies, or data inputs are not reasonably available to quantify GHG emissions associated with a specific action, the agency should explain why such an analysis cannot be done, and should seek to present a reasonable estimated range of quantitative emissions for the proposed action and alternatives. Where tools are available for some aspects of the analysis but not others, agencies should use all reasonably available tools and describe any relevant limitations. Agencies are encouraged to identify and communicate any data or tool gaps that they encounter to CEQ.

If an agency determines that it cannot provide even a reasonable range of potential GHG emissions, the agency should provide a qualitative analysis and its rationale for determining that a quantitative analysis is not possible. A qualitative analysis may include sector-specific descriptions of the GHG emissions from the category of Federal agency action that is the subject of the NEPA analysis, but should seek to provide additional context for potential resulting emissions.

Agencies should be guided by the rule of reason, as well as their expertise and experience, in conducting analysis commensurate with the quantity of projected GHG emissions and using GHG quantification tools suitable for the proposed action.[60] The rule of reason and the concept of proportionality caution against providing an in-depth analysis of emissions regardless of the insignificance of the quantity of GHG emissions that the proposed action would cause. For example, some proposed actions may involve net GHG emission reductions or no net GHG increase, such as certain infrastructure or renewable energy projects. For such actions, agencies should generally quantify projected GHG emission reductions, but may apply the rule of reason when determining the appropriate depth of analysis such that precision regarding emission reduction benefits does not come at the expense of efficient and accessible analysis. Absent exceptional circumstances, the relative minor and short-term GHG emissions associated with construction of certain renewable energy projects, such as utility-scale solar and offshore wind, should not warrant a detailed analysis of lifetime GHG emissions. As a second example, actions with only small GHG emissions may be able to rely on less detailed emissions estimates.

B. Disclosing and Providing Context for a Proposed Action's GHG Emissions and Climate Effects

In addition to quantifying emissions as described in Section IV(A), agencies should disclose and provide context for GHG emissions and climate effects to help decision makers and the public understand proposed actions' potential GHG emissions and climate change effects. To disclose effects and provide additional context for proposed actions' emissions once GHG emissions have been estimated, agencies should use the following best practices, as relevant:

(1) In most circumstances, once agencies have quantified GHG emissions, they should apply the best available estimates of the SC–GHG [61] to the incremental metric tons of each individual type of GHG emissions [62] expected from a proposed action and its alternatives.[63] SC–GHG estimates allow monetization (presented in U.S. dollars) of the climate change effects from the marginal or incremental emission of GHG emissions, including carbon dioxide, methane, and nitrous oxide.[64] These 3 GHGs represent more than 97 percent of U.S. GHG emissions.[65] The SC–GHG provides an appropriate and valuable metric that gives decision makers and the public useful information and context about a proposed action's climate effects even if no other costs or benefits are monetized, because metric tons of GHGs can be difficult to understand and assess the significance of in the abstract.[66] The SC–GHG translates metric tons of emissions into the familiar unit of dollars, allows for comparisons to other monetized values, and estimates the damages associated with GHG emissions over time and associated with different GHG pollutants.[67] The SC–GHG also can

[57] Carbon sequestration is the long-term carbon storage in plants, soils, geologic formations, and oceans.

[58] For example, the U.S. Department of Agriculture's (USDA's) Forest Inventory and Analysis tool can be used to assess the carbon sequestration of existing forestry activities along with the reduction in carbon sequestration (emissions) of project-level activities. *See* USDA, *Forest Inventory Data & Tools (FIA), https://www.fs.usda.gov/research/products/dataandtools/forestinventorydata.*

[59] *See* 40 CFR 1502.21.

[60] *See* 40 CFR 1502.2(b) (environmental impact statements shall discuss impacts in proportion to their significance); 40 CFR 1502.15 (data and analyses in a statement shall be commensurate with the importance of the impact).

[61] The SC–GHG estimates provide an aggregated monetary measure (in U.S. dollars) of the future stream of damages associated with an incremental metric ton of emissions and associated physical damages (*e.g.,* temperature increase, sea-level rise, infrastructure damage, human health effects) in a particular year. The ''Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990'' released by the Interagency Working Group on Social Cost of Greenhouse Gases (IWG SC–GHG) in February 2021 presents interim estimates of the social cost of carbon, methane, and nitrous oxide, which are the same as those developed by the IWG in 2013 and 2016 (updated to 2020 dollars). *See* IWG SC–GHG, U.S. Gov't, *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990* (Feb. 2021), *https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.* The Technical Support Document notes that estimates of the SC–GHG have been used in NEPA analysis.

[62] Note that applying the specific social cost of each individual GHG to the quantifications of that GHG is more accurate than transforming the gases into CO_2-equivalents and then multiplying the CO_2-equivalents by the social cost of CO_2. *See* IWG SC–GHG, U.S. Gov't, *Addendum to Technical Support Document on Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide,* 2 (Aug. 2016), *https://www.epa.gov/sites/default/files/2016-12/documents/addendum_to_sc-ghg_tsd_august_2016.pdf.*

[63] *See* IWG SC–GHG, *Technical Support Document, supra* note 61. Agencies should typically apply the best available estimates of the SC–GHG to the incremental metric tons of GHG emissions expected from a proposed action and its alternatives. In uncommon circumstances, an agency may choose not to do so if doing so would be confusing, there are no available estimates for the GHG at issue, or, consistent with the concept of proportionality, an agency does not produce a quantitative estimate of GHG emissions because the emissions at issue are *de minimis.*

[64] Estimates of SC–HFCs have been developed and are available for use in NEPA analysis. *See, e.g.,* EPA, Regulatory Impact Analysis for Phasing Down Production and Consumption of Hydrofluorocarbons (HFCs) (June 2022), *https://www.epa.gov/system/files/documents/2022-07/RIA%20for%20Phasing%20Down%20Production%20and%20Consumption%20of%20Hydrofluorocarbons%20%28HFCs%29.pdf.*

[65] EPA, EPA 430–R–22–003, *Inventory of U.S. Greenhouse Gas Emissions and Sinks, 1990–2020* (Apr. 2022), *https://www.epa.gov/system/files/documents/2022-04/us-ghg-inventory-2022-main-text.pdf.*

[66] As described in section VI(F), NEPA does not require a cost-benefit analysis in which all monetized benefits and costs are directly compared.

[67] For example, if alternatives or mitigation strategies would result in varying emissions or

assist agencies and the public in assessing the significance of climate impacts. This is a simple and straightforward calculation that should not require additional time or resources.

Certain circumstances may make monetization using the SC–GHG particularly useful, such as if a NEPA review monetizes other costs and benefits for the proposed action (see Section VI(F)); if the alternatives differ in GHG emissions over time or in the type of GHGs emitted; or if the significance of climate change effects is difficult to assess or not apparent to the public without monetization. SC–GHG estimates can help describe the net social costs of increasing GHG emissions as well as the net social benefits of reducing such emissions. Given NEPA's mandates to consider worldwide and long-range environmental problems,[68] it is most appropriate for agencies to focus on SC–GHG estimates that capture global climate damages and, consistent with the best available science, reflect a timespan covering the vast majority of effects and discount future effects at rates that consider future generations. It is often also worth affirming that SC–GHG estimates, including those available at the publication of this guidance, may be conservative underestimates because various damage categories (like ocean acidification) are not currently included.

(2) Where helpful to provide context, such as for proposed actions with relatively large GHG emissions or reductions or that will expand or perpetuate reliance on GHG-emitting energy sources, agencies should explain how the proposed action and alternatives would help meet or detract from achieving relevant climate action goals and commitments, including Federal goals, international agreements, state or regional goals, Tribal goals, agency-specific goals, or others as appropriate.[69] However, as explained above, NEPA requires more than a statement that emissions from a proposed Federal action or its alternatives represent only a small fraction of global or domestic emissions. Such comparisons and fractions are not an appropriate method for characterizing the extent of a proposed action's and its alternatives' contributions to climate change. Agencies also should discuss whether and to what extent the proposal's reasonably foreseeable GHG emissions are consistent with GHG reduction goals, such as those reflected in the U.S. nationally determined contribution under the Paris Agreement. Federal planning documents that illustrate multi-decade pathways to achieve policy may also provide useful information, such as the *Long-Term Strategy of the United States: Pathways to Net-Zero Greenhouse Gas Emissions by 2050.*[70] Similarly, agencies' own climate goals may provide relevant context. Evaluating a proposed action's and its alternatives' consistency with such goals and commitments can help illuminate the policy context, the importance of considering alternatives and mitigation, and tradeoffs of the decision and help agencies evaluate the significance of a proposed action's GHG emissions and climate change effects. This type of comparison provides a different kind of disclosure and context than that provided by application of SC–GHG estimates as described above, demonstrating the potential utility of multiple contextualization methods.

(3) Where relevant, agencies should summarize and cite to available scientific literature to help explain the real-world effects—including those that will be experienced locally in relation to the proposed action—associated with an increase in GHG emissions that contribute to climate change, such as sea-level rise, temperature changes, ocean acidity, and more frequent and severe wildfires and drought, and human health effects (including to underserved populations).[71] Agencies should use the best available information, including scenarios and climate modeling information that are most relevant to a proposed action.[72]

(4) Agencies also can provide accessible comparisons or equivalents to help the public and decision makers understand GHG emissions in more familiar terms. Techniques may include placing a proposed action's GHG emissions in more familiar metrics such as household emissions per year, annual average emissions from a certain number of cars on the road, or gallons of gasoline burned.[73] Such comparisons may be a useful supplement and can, for example, be presented along with monetized damage estimates using SC–GHG values. Agencies should use disclosure and contextualization methods that best fit their proposed actions and alternatives.

C. Reasonable Alternatives

Considering reasonable alternatives, including alternatives that avoid or mitigate GHG emissions, is fundamental to the NEPA process and accords with Sections 102(2)(C) and 102(2)(E) of NEPA, which independently require the consideration of alternatives in environmental documents.[74] NEPA calls upon agencies to use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects on the human environment.[75]

Consideration of alternatives provides an agency decision maker the information needed to examine other possible approaches to a particular proposed action (including the no action alternative) that could alter environmental effects or the balance of factors considered in making the decision. Agencies make better informed decisions by comparing relevant GHG emissions, GHG emission reductions, and carbon sequestration potential across reasonable alternatives, assessing trade-offs with other environmental values, and evaluating

reductions of carbon dioxide, methane, and nitrous oxide over time, presenting emissions estimates in metric tons of each gas, or in metric tons of CO_2e, alone cannot fully illustrate the differences in the temporal pathways of these pollutants' impacts on society. The SC–GHG estimates can capture these differences when estimating the damages from the emission of each specific pollutant in a common unit of measurement, *i.e.,* the U.S. Dollar.

[68] *See, e.g.,* NEPA's direction that agencies shall consider the ''worldwide and long-range character of environmental problems.'' 42 U.S.C. 4332(2)(F).

[69] For example, the U.S. Department of the Interior's Bureau of Land Management (BLM) has discussed how agency actions in California, especially joint projects with the State, may or may not facilitate California reaching its GHG emission reduction goals, including goals under the State's Assembly Bill 32 (Global Warming Solutions Act) and related legislation. *See, e.g.,* BLM, Desert Renewable Energy Conservation Plan Proposed Land Use Plan Amendment and Final Environmental Impact Statement, Vol. I, section I.3.3.2, 12 (Oct. 2015), *https://eplanning.blm.gov/public_projects/lup/66459/20012403/250016887/I.3_Planning_Process.pdf; see also* 40 CFR 1506.2(d) (directing agencies to discuss any inconsistency of a proposed action with an approved State, Tribal, or local plan or law); BLM, Environmental Assessment for Oberon Renewable Energy Project, 33–34 (Aug. 2021), *https://eplanning.blm.gov/public_projects/2001226/200478716/20043975/250050165/Environmental%20Assessment%201-Main%20Text.pdf.*

[70] U.S. Dep't of State (DOS) & U.S. Exec. Off. of the President (EOP), *The Long-Term Strategy of the United States: Pathways to Net-Zero Greenhouse Gas Emissions by 2050* (Nov. 2021), *https://www.whitehouse.gov/wp-content/uploads/2021/10/US-Long-Term-Strategy.pdf.*

[71] For example, see the scientific studies referenced in section III(B).

[72] In addition, newer tools or modelling may enable agencies in some cases to provide information on localized or ''downscaled'' climate effects in addition to global effects. *See, e.g.,* Romany M. Webb et al., *Evaluating Climate Risk in NEPA Reviews: Current Practices and Recommendations for Reform,* 29, *https://blogs.edf.org/climate411/files/2022/02/Evaluating-Climate-Risk-in-NEPA-Reviews-Full-Report.pdf.*

[73] *See* EPA's equivalency calculator, *https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator.*

[74] *See* 42 U.S.C. 4332(2)(C) and (2)(E).

[75] *See* 42 U.S.C. 4332(2)(C)(iii); 40 CFR 1502.1, 1502.14.

the risks from or resilience to climate change inherent in a proposed action and its design.

Agencies must consider a range of reasonable alternatives, as well as reasonable mitigation measures if not already included in the proposed action or alternatives, consistent with the level of NEPA review (*e.g.,* EA or EIS) and the purpose and need for the proposed action.[76] Agencies should leverage the early phases of their existing planning processes to help identify potential alternatives to address an action's anticipated environmental effects. When analyzing alternatives, agencies should compare the anticipated levels of GHG emissions from each alternative—including the no action alternative—and mitigation to provide information to the public and enable the decision maker to make an informed choice. To help provide clarity, agencies should consider presenting charts, tables, or figures, as appropriate, to compare GHG emissions and climate effects across alternatives.

Neither NEPA, the CEQ Regulations, or this guidance require the decision maker to select the alternative with the lowest net GHG emissions or climate costs or the greatest net climate benefits. However, and in line with the urgency of the climate crisis, agencies should use the information provided through the NEPA process to help inform decisions that align with climate change commitments and goals. For instance, agencies should evaluate reasonable alternatives that may have lower GHG emissions, which could include technically and economically feasible clean energy alternatives to proposed fossil fuel-related projects, and consider mitigation measures to reduce GHG emissions to the greatest extent possible.

Where relevant—such as for proposed actions that will generate substantial GHG emissions—agencies should identify the alternative with the lowest net GHG emissions or the greatest net climate benefits among the alternatives they assess. And, as described throughout this guidance, they should use the NEPA process to make informed decisions grounded in science that are transparent with respect to how Federal actions will help meet climate change goals and commitments, or alternately, detract from them.

D. Baseline for Considering Environmental Effects

A NEPA review must identify the area affected by a proposed action (*i.e.,* the affected environment).[77] Identification of the affected environment includes identifying and describing reasonably foreseeable environmental trends, including climate change effects. The NEPA review also must identify the current and projected future state of the affected environment without the proposed action (*i.e.,* the no action alternative), which serves as the baseline for considering the effects of the proposed action and its reasonable alternatives.[78] For an estimate of GHG emissions from the proposed action to have meaningful context, an accurate estimate of GHG emissions without the proposed action should be included in a NEPA review. The temporal bounds for the analysis are determined by the projected initiation of the action and the expected life of the proposed action and its effects.[79] It is noteworthy that the impacts of GHGs can be very long-lasting.[80]

E. Direct and Indirect Effects

NEPA requires agencies to consider the reasonably foreseeable direct and indirect effects of their proposed actions and reasonable alternatives (as well as the no-action alternative).[81] The term ''direct effects'' refers to reasonably foreseeable effects that are caused by the action and occur at the same time and place.[82] The term ''indirect effects'' refers to effects that are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.[83] Indirect effects generally include reasonably foreseeable emissions related to a proposed action that are upstream or downstream of the activity resulting from the proposed action.[84] For example, where the proposed action involves fossil fuel extraction, direct emissions typically include GHGs emitted during the process of exploring for and extracting the fossil fuel. The reasonably foreseeable indirect effects of such an action likely would include effects associated with the processing, refining, transporting, and end-use of the fossil fuel being extracted, including combustion of the resource to produce energy. Indirect emissions[85] are often reasonably foreseeable since quantifiable connections frequently exist between a proposed activity that involves use or conveyance of a commodity or resource, and changes relating to the production or consumption of that resource.[86]

As discussed in Section IV(A), agencies generally should quantify all reasonably foreseeable emissions associated with a proposed action and reasonable alternatives (as well as the no-action alternative). Quantification should include the reasonably foreseeable direct and indirect GHG emissions of their proposed actions. Agencies also should disclose the information and any assumptions used in the analysis and explain any uncertainty.[87] In assessing a proposed action's, and reasonable alternatives', reasonably foreseeable direct and indirect GHG emissions, the agency should use the best available information.[88] As with any NEPA review, the rule of reason should guide the agency's analysis and the level of

[76] *See* 42 U.S.C. 4332(2)(C), 4332(2)(E), and 40 CFR 1502.14(e), 1501.5(c)(2). The purpose and need for action usually reflects both the extent of the agency's statutory authority and its policies.

[77] *See* 40 CFR 1502.15 (providing that environmental impact statements shall succinctly describe the environmental impacts on the area(s) to be affected or created by the alternatives under consideration).

[78] *See, e.g.,* CEQ, Memorandum to Agencies: Forty Most Asked Questions Concerning CEQ's NEPA Regulations, Question 3, ''No-Action Alternative'' (1986) (''This analysis provides a benchmark, enabling decisionmakers to compare the magnitude of environmental effects of the action alternatives'').

[79] CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act* (1997), *https://ceq.doe.gov/publications/cumulative_effects.html.* Agencies also should consider proposed actions pursuant to E.O. 13653, *Preparing the United States for the Impacts of Climate Change,* 78 FR 66817 (Nov. 6, 2013), which considers how capital investments will be affected by a changing climate over time.

[80] Elevated concentrations of carbon dioxide will persist in the atmosphere for hundreds or thousands of years, so the earth will continue to warm in the coming decades. The warmer it gets, the greater the risk for more severe changes to the climate and the earth's system. EPA, *Impacts of Climate Change, https://www.epa.gov/climatechange-science/impacts-climate-change* (last updated Aug. 19, 2022); EPA, *Understanding Global Warming Potentials, https://www.epa.gov/ghgemissions/understanding-global-warming-potentials* (last updated May 5, 2022).

[81] 42 U.S.C. 4332(2)(C)(i); 40 CFR 1508.1(g).

[82] 40 CFR 1508.1(g)(1).

[83] 40 CFR 1508.1(g)(2); *see also Birckhead* v. *Fed. Energy Regul. Comm'n,* 925 F.3d 510, 516 (D.C. Cir. 2019).

[84] These indirect emissions are sometimes referred to as ''upstream'' or ''downstream emissions,'' described in relation to where in the causal chain they fall relative to the proposed action.

[85] As used in this guidance, ''indirect emissions'' refers to emissions that are indirect effects of the proposed action.

[86] For example, natural gas pipeline infrastructure creates the economic conditions for additional natural gas production and consumption, including both domestically and internationally, which produce indirect (both upstream and downstream) GHG emissions that contribute to climate change.

[87] *See* 40 CFR 1502.21.

[88] For example, agencies may consider consulting information available from the U.S. Energy Information Administration, the International Energy Agency, the Federal Energy Management Program, or the Department of Energy. *See, e.g.,* U.S. Energy Info. Admin., Annual Energy Outlook 2022 (Mar. 3, 2022), *https://www.eia.gov/outlooks/aeo/;* International Energy Agency (IEA), *Net Zero by 2050,* (May 2021), *https://www.iea.org/reports/net-zero-by-2050.*

effort can be proportionate to the scale of the net GHG effects and whether net effects are positive or negative, with actions resulting in very few or an overall reduction in GHG emissions generally requiring less detailed analysis than actions with large emissions.[89]

Agencies should seek to obtain the information needed to quantify emissions, including by requesting or requiring information held by other entities (such as project applicants), because such information is generally essential to reasoned decision making.[90] Where information regarding direct or indirect emissions is not available, agencies should make best efforts to develop a range of potential emissions.[91] Agencies can provide an upper bound for effects analysis by treating the resource provided or enabled by the actions they take as new or additional. In the example of fossil fuel extraction or transportation, this is sometimes referred to as a ''full burn'' assumption, as the agency can provide an upper bound estimate of GHG emissions by assuming that all of the available resources will be produced and combusted to create energy.[92]

Some proposed actions, such as those increasing the supply of certain energy resources like oil, natural gas, or renewable energy generation, may result in changes to the resulting energy mix as energy resources substitute for one another on the domestic or global energy market.[93] Different energy resources emit different amounts of GHGs and other air pollutants.[94] For proposed actions involving such resource substitution considerations, where relevant, CEQ encourages agencies to conduct substitution analysis to provide more information on how a proposed action and its alternatives are projected to affect the resulting resource or energy mix, including resulting GHG emissions.[95] Substitution analysis generally is relevant to actions related to the extraction, transportation, refining, combustion, or distribution of fossil fuels, for example. Agencies should not simply assume that if the federal action does not take place, another action will perfectly substitute for it and generate identical emissions, such that the action's net emissions relative to the baseline are zero.[96] Such an assumption of perfect substitution typically contradicts basic economic principles of supply and demand.[97] Instead, where relevant, agencies can use available models to help conduct substitution analysis.[98] Agencies should disclose any assumptions and inputs used in substitution analysis and use models that accurately account for reasonable and available energy substitute resources, including renewable energy. Further, the analysis generally should be complemented with evaluation that compares the proposed action's and reasonable alternatives' energy use against scenarios or energy use trends that are consistent with achieving science-based GHG reduction goals, such as those pursued in the *Long-Term Strategy of the United States.*[99]

In addition to addressing an action's direct and indirect effects, NEPA requires agencies to address the effects of ''connected'' actions.[100] When evaluating a proposed Federal action, agencies should account for other closely related actions that should be discussed in the same EIS or EA. Actions are connected if they: (i) automatically trigger other actions that may require environmental impact statements; (ii) cannot or will not proceed unless other actions are taken previously or simultaneously; or (iii) are interdependent parts of a larger action and depend on the larger action for their justification.[101] For example, NEPA reviews for proposed resource extraction and development projects typically should address the reasonably foreseeable effects of other closely related agency actions that authorize separate phases or aspects of development. Depending on the relationship between any of the phases, as well as the authority under which they may be carried out, agencies should use the analytical scope that best informs their decision making.

F. Cumulative Effects

In addition to analyzing a proposed action's direct and indirect effects, NEPA and CEQ's regulations require an agency to also consider the proposed action's cumulative effects.[102] Cumulative effects are effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.[103] In evaluating a proposed action's cumulative climate change effects, an

[89] For example, as noted in section (IV)(A)(1), for proposed actions that involve net GHG emission reductions (such as renewable energy projects), agencies should attempt to quantify net GHG emission reductions, but may apply the rule of reason when determining the appropriate depth of analysis such that precision regarding emission reduction benefits does not come at the expense of efficient and accessible analysis.

[90] *See* 40 CFR 1502.21(b); *see also Birckhead,* 925 F.3d at 520; *Barnes* v. *U.S. Dep't of Transp.,* 655 F.3d 1124 (9th Cir. 2011). Agencies also may consider amendments to their regulations, where appropriate, to ensure they are able to gather from applicants the information needed to analyze the climate change effects of proposed actions.

[91] *See, e.g.,* Jayni Hein, Jason Schwartz, and Avi Zevin, *Pipeline Approvals and Greenhouse Gas Emissions,* 29–30 (Apr. 2019), discussing availability of tools for quantifying substitution effects and noting the need for further modeling tool development.

[92] A full burn assumption is consistent with analyses prepared by some agencies. *See* BLM, Environmental Assessment, DOI–BLM–CO–S010–2011–0074–EA, 81 (2017), *https://eplanning.blm.gov/public_projects/nepa/70895/127910/155610/King_II_Lease_Mod_Final_EA_2017-1012.pdf* (stating that the agency ''assume[d] that the remaining portion of the maximum year coal to be shipped . . . is eventually combusted.'').

[93] *See, e.g., WildEarth Guardians* v. *BLM.,* 870 F.3d 1222, 1235 (10th Cir. 2017) (''[W]hen coal carries a higher price, for whatever reason that may be, the nation burns less coal in favor of other sources. A force that drives up the cost of coal could thus drive down coal consumption.''); *see also* Jayni Hein and Natalie Jacewicz, *Implementing NEPA in the Age of Climate Change,* 10 Mich. J. Envtl L. 1, 40–43 (2020) (describing energy substitution analysis and how agencies can conduct it for NEPA analysis).

[94] *See* Hein & Jacewicz, *supra* note 93, at 42 (citing B.D. Hong & E.R. Slatick, U.S. Energy Info. Admin., *Carbon Dioxide Emission Factors for Coal, https://www.eia.gov/coal/production/quarterly/co2_article/co2.html*).

[95] *See, e.g.,* Peter Howard, Inst. for Pol'y Integrity, N.Y.U. Sch. of L., *The Bureau of Land Management's Modeling Choice for the Federal Coal Programmatic Review* (June 2016), *https://policyintegrity.org/files/publications/BLM_Model_Choice.pdf* (describing multiple power sector models available to Federal agencies for use in NEPA analysis); *see also WildEarth Guardians,* 870 F.3d at 1235 (holding that an agency's ''blanket assertion that coal would be substituted from other sources, unsupported by hard data, does not provide 'information sufficient to permit a reasoned choice' between the preferred alternative and no action alternative.'').

[96] Hein & Jacewicz, *supra* note 93, at 43–44 (describing the fallacy of perfect substitution); *id.* at 51–52 (describing litigation concerning the Wright Area coal leases).

[97] *See, e.g., WildEarth Guardians,* 870 F.3d at 1235–37.

[98] Available models include the Bureau of Ocean Energy Management's Revised Market Simulation Model, the U.S. Energy Information Administration's National Energy Modeling System, and ICF International's Integrated Planning Model.

[99] DOS & EOP, *supra* note 70; *see also* Hein & Jacewicz, *supra* note 93, at 48 (stating, ''[a] far more rational approach would be to model at least two policy scenarios: one taking the ''constant demand'' approach, and the other based on fossil fuel consumption consistent with meeting the 1.5 or 2 degrees Celsius warming targets laid out in the Paris Accord.'').

[100] Note that the concepts of ''connected actions'' and ''indirect effects'' bear some similarities but are analytically distinct. ''Connected actions'' are actions related to a proposed action that an agency must consider in the same environmental impact statement. *See* 40 CFR 1501.9(e)(1). ''Indirect effects'' are not actions in themselves, but rather reasonably foreseeable effects that are caused by the proposed action.

[101] 40 CFR 1501.9(e)(1).

[102] *See* 40 CFR 1502.16, 1508.1(g)(3).

[103] 40 CFR 1508.1(g)(3).

agency should consider the proposed action in the context of the emissions from past, present, and reasonably foreseeable actions. When assessing cumulative effects, agencies should also consider whether certain communities experience disproportionate cumulative effects, thereby raising environmental justice concerns.[104]

All types of GHG emissions contribute to real-world physical changes. Given that climate change is the result of the increased global accumulation of GHGs climate effects analysis is inherently cumulative in nature. Thus, the analysis and public disclosure of cumulative effects can be accomplished by quantifying GHG emissions and providing context for understanding their effects as discussed above, including by monetizing climate damages using estimates of the SC–GHG, placing those damages in the context of relevant climate action goals and commitments, and summarizing and citing to available scientific literature to help explain real world effects.

G. Short- and Long-Term Effects

When considering effects, agencies should take into account both the short- and long-term adverse and beneficial effects using a temporal scope that is grounded in the concept of reasonable foreseeability. Some proposed actions and reasonable alternatives will require consideration of effects from different stages of the action to ensure the direct effects and reasonably foreseeable indirect effects are appropriately assessed; for example, the effects of construction are different from the effects of the operations and maintenance of a facility.

The effects analysis should cover the action's reasonably foreseeable lifetime, including anticipated GHG emissions associated with construction, operations, and decommissioning. Agencies should identify an appropriate lifetime for the proposed action using available indicators and guided by the concept of reasonable foreseeability.

Identifying an appropriate lifetime for the action also will inform assessment of long-term emissions benefits of proposed actions and reasonable alternatives. For example, development of a new wind energy project may result in short-term construction GHG emissions but overall long-term GHG benefits. Agencies should describe both short- and long-term effects in comparison to the no action alternative in NEPA reviews and clearly explain the net effect of their actions even if precision regarding the timing of short- and long-term effects is not possible.

H. Mitigation

Identifying and analyzing potential mitigation measures is an important component of the NEPA process.[105] Evaluating potential mitigation measures generally involves first determining whether impacts from a proposed action or alternatives can be avoided, then considering whether adverse impacts can be minimized, then, when impacts are unavoidable, rectifying them and, if appropriate, requiring compensation for residual impacts.[106] Mitigation plays a particularly important role in how agencies should assess the potential climate change effects of proposed actions and reasonable alternatives. Agencies should consider mitigation measures that will avoid or reduce GHG emissions. Given the urgency of the climate crisis, CEQ encourages agencies to mitigate GHG emissions to the greatest extent possible.

Agencies should consider mitigation, particularly avoidance and minimization, as early as possible in the development of their actions, including during scoping, public engagement, and alternatives analysis. As part of early and meaningful public engagement, agencies should solicit public input on potential mitigation measures, including from communities that the proposed action and reasonable alternatives may affect. In their NEPA documents, agencies should discuss any mitigation measures considered and whether they included those measures in the preferred alternative. Where potential mitigation measures are not adopted, agencies should explain why as early as practicable in the NEPA process.

Agencies should consider available mitigation measures that avoid, minimize, or compensate for GHG emissions and climate change effects when those measures are reasonable and consistent with achieving the purpose and need for the proposed action. Such mitigation measures could include enhanced energy efficiency, renewable energy generation and energy storage, lower-GHG-emitting technology, reduced embodied carbon in construction materials, carbon capture and sequestration, sustainable land management practices, and capturing GHG emissions such as methane.

Federal agencies also should evaluate the quality of that mitigation by ensuring it meets appropriate performance standards.[107] Appropriate performance standards help ensure that GHG mitigation is additional, verifiable, durable, enforceable, and will be implemented.[108] NEPA does not limit consideration of mitigation to actions involving significant effects. However, mitigation can be particularly effective in helping agencies reduce or avoid significant effects.[109] Agencies can discuss the scope of their mitigation authority to support any mitigation commitments relied upon in NEPA analysis, including mitigation supporting a finding of no significant impact.[110] In addition, consistent with existing agency best practice, an agency's decision on a proposed action should identify the mitigation measures that the agency commits to take, recommends, or requires others to take.[111]

The CEQ Regulations and guidance also recognize the value of monitoring to ensure that mitigation is carried out as provided in a record of decision or finding of no significant impact.[112] Monitoring intensity and duration

[104] *See infra* section VI(E).

[105] *See* 42 U.S.C. 4332(2)(C) (requiring consideration of mitigation measures in impact statements by requiring the consideration of ''any adverse environmental effects which cannot be avoided'').

[106] *See* 40 CFR 1508.1(s), 1501.9(e)(2) (alternatives include mitigation measures not included in the proposed action); *see generally* 10 CFR 900.3 (2019) (identifying ''mitigation hierarchy'' as ''first seeking to avoid, then minimize impacts, then, when necessary, compensate for residual impacts''); U.S. Fish and Wildlife Service (FWS) Mitigation Policy (Nov. 21, 2016), *https://www.federalregister.gov/d/2016-27751.*

[107] *See* CEQ, Memorandum to Heads of Federal Agencies, Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact (''Appropriate Use of Mitigation and FONSI Memo''), 8–9, 76 FR 3843 (Jan. 21, 2011), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Mitigation_and_Monitoring_Guidance_14Jan2011.pdf.*

[108] *See id.; see also* U.S. Army Corps of Engineers and EPA, Final Rule, Compensatory Mitigation for Losses of Aquatic Resources, 73 FR 19593 (Apr. 10, 2008) (discussing verifiable and enforceable performance standards for mitigation).

[109] See 40 CFR 1501.6(c).

[110] *See id.* (The finding of no significant impact shall state the authority for any mitigation that the agency has adopted and any applicable monitoring or enforcement provisions. If the agency finds no significant impacts based on mitigation, the mitigated finding of no significant impact shall state any enforceable mitigation requirements or commitments that will be undertaken to avoid significant impacts.); *see also* CEQ, Appropriate Use of Mitigation and FONSI Memo, *supra* note 107, at 7 (''Mitigation commitments needed to lower the level of impacts so that they are not significant should be clearly described in the mitigated FONSI document and in any other relevant decision documents related to the proposed action.'').

[111] *See* CEQ, Appropriate Use of Mitigation and FONSI Memo, *supra* note 107, at 13–14.

[112] See 40 CFR 1505.2(a)(3), 1505.3; *see also* CEQ, Appropriate Use of Mitigation and FONSI Memo, *supra* note 107.

should be aligned with the mitigation action taken.

Finally, while this subsection primarily addresses mitigating a proposed action's GHG emissions, agencies also should consider environmental design features, alternatives, and mitigation measures to address the effects of climate change on the proposed action, including to enhance resilience and adaptation. See Section IV(D).

I. Special Considerations for Biological GHG Sources and Sinks

Many GHG emissions come from combusting fossil fuels and releasing substances into the atmosphere.[113] In addition to these sources, some GHG emissions are related to the natural carbon cycle,[114] or result from the combustion, harvest, decomposition, or other processing of biologically based materials.[115] These types of emissions are referred to as ''biogenic.'' [116] Biogenic GHG emissions from land management actions—such as prescribed burning, timber stand improvements, fuel load reductions, and scheduled harvesting—involve GHG emissions and carbon sequestration that operate within the global carbon and nitrogen cycle, which may be affected by those actions. Similarly, some water management practices have GHG emission consequences that may require unique consideration (*e.g.,* reservoir management practices can reduce methane releases, wetlands management practices can enhance carbon sequestration, and water conservation can improve energy efficiency).

In the land and resource management context, how a proposed action and reasonable alternatives (as well as the no-action alternative) affects a net carbon sink or source will depend on multiple factors such as the local or regional climate and environment, the distribution of carbon across carbon pools in the action area, ongoing activities and trends, and the role of natural disturbances in the relevant area.

In NEPA reviews, for actions involving potential changes to biological GHG sources and sinks, agencies should include a comparison of net GHG emissions and carbon stock [117] changes that are anticipated to occur, with and without implementation of the proposed action and reasonable alternatives. The analysis should consider the estimated GHG emissions (from biogenic and fossil-fuel sources), carbon sequestration potential, and the net change in relevant carbon stocks in light of the proposed actions and timeframes under consideration, and explain the basis for the analysis.

Some actions that involve ecosystem restoration [118] can generate short-term biogenic emissions while resulting in overall long-term net reductions of atmospheric GHG concentrations through increases in carbon stocks or reduced risks of future emissions. One example is certain vegetation management practices that affect the risk of wildfire, insect and disease outbreak, or other disturbance. Some resource management activities, such as a prescribed burn or certain non-commercial thinning of forests or grasslands conducted to reduce wildfire risk or insect infestations, might result in short-term GHG emissions or loss of stored carbon but greater long-term ecosystem health, including an overall net increase in carbon sequestration and storage. However, other types of land-use changes, such as permanent deforestation, can adversely alter ecosystem long-term carbon dynamics, resulting in net emissions. Agencies can use relevant tools to analyze the anticipated long-term GHG emissions implications from proposed ecosystem restoration actions.

Federal land and resource management agencies should consider developing and maintaining agency-specific principles and guidance for considering biological carbon in management and planning decisions.[119] Such guidance can help address the importance of considering biogenic carbon fluxes and storage within the context of other management objectives and ecosystem service goals, and integrating carbon considerations as part of a balanced and comprehensive program of sustainable management, climate change mitigation, and climate change adaptation.

V. Considering the Effects of Climate Change on a Proposed Action

According to the USGCRP and others, GHGs already in the atmosphere will continue altering the climate system into the future, even with current or future emissions control efforts.[120] To illustrate how climate change may impact proposed actions and alternatives and to consider climate resilience, NEPA reviews should consider the ongoing impacts of climate change and the foreseeable state of the environment, especially when evaluating project design, siting, and reasonable alternatives. In addition, climate change resilience [121] and adaptation [122] are important

[113] Burning fossil fuels (such as oil, coal, and natural gas), wood, and other forms of carbon releases stored carbon into the atmosphere, where it becomes a GHG. GHGs are gases in the atmosphere that absorb and release heat. Dep't of Energy, Off. of Science, *DOE Explains...the Carbon Cycle, https://www.energy.gov/science/doe-explainsthe-carbon-cycle.*

[114] The carbon cycle is the process that moves carbon between plants, animals, and microbes; minerals in the earth; and the atmosphere. Most carbon on Earth is stored in rocks and sediments. The rest is in the ocean, atmosphere, and in living organisms. Scientists use the term ''carbon sinks'' to refer to places where carbon is stored away from the atmosphere. *Id.*

[115] Fossil fuels are not considered biologically based materials. *See, e.g.,* EPA, *Framework for Assessing Biogenic CO_2 Emissions from Stationary Sources,* 5 (Nov. 2014), *https://www.epa.gov/sites/default/files/2016-08/documents/framework-for-assessing-biogenic-co2-emissions.pdf* (''In contrast to the relatively short timescale of the biological carbon cycle, carbon in fossil fuel reservoirs, such as coal seams and oil and gas deposits, was removed from the atmosphere by plants over millions of years but was not returned to the atmosphere through the natural processes described above. Instead, because of geologic processes, the carbon that accumulated in these deposits has been isolated from the active biological cycling of carbon to and from the atmosphere. Without human intervention, carbon in fossil fuel reservoirs could remain isolated from the biogeochemical cycling of carbon long into the future.'')

[116] EPA, *Carbon Dioxide Emissions Associated with Bioenergy and Other Biogenic Sources, https://19january2017snapshot.epa.gov/climatechange/carbon-dioxide-emissions-associated-bioenergy-and-other-biogenic-sources_.html; see also* Merriam-Webster Dictionary, *Biogenic* (Online Ed., last updated Oct. 21, 2022), *https://www.merriam-webster.com/dictionary/biogenic* (defining ''biogenic'' as ''produced by living organisms'').

[117] *See, e.g.,* 10 CFR 300.2 (''Carbon stocks mean the quantity of carbon stored in biological and physical systems including: trees, products of harvested trees, agricultural crops, plants, wood and paper products and other terrestrial biosphere sinks, soils, oceans, and sedimentary and geological sinks.'').

[118] For example, Federal agencies sometimes consider actions that would benefit ecosystems by restoring degraded lands or restoring shoreline.

[119] *See, e.g.,* USDA Forest Service, *Considering Forest and Grassland Carbon in Land Management* (2017), *https://www.fs.usda.gov/research/treesearch/54316; see also* U.S. Dep't of the Interior, Order No. 3399, *Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process* (Apr. 16, 2021), *https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3399-508_0.pdf.*

[120] *See* USGCRP, Fourth National Climate Assessment, *supra* note 28, Chapter 2, *Our Changing Climate, https://nca2018.globalchange.gov/chapter/2/.*

[121] Resilience refers to the ability to prepare for and adapt to changing conditions and withstand and recover rapidly from disruption. U.S. Dep't of Commerce Nat'l Inst. of Standards and Tech. (NIST), SP 800–160 Vol. 2, Rev. 1, 76, *https://csrc.nist.gov/glossary/term/resilience#:~:text=with%20mission%20needs.-,Source(s)%3A,naturally%20occurring%20threats%20or%20incidents.*

[122] Adaptation refers to actions taken at the individual, local, regional, and national levels to reduce risks from even today's changed climate conditions and to prepare for impacts from additional changes projected for the future. USGCRP, Fourth National Climate Assessment, *supra* note 28, Chapter 28, *Reducing Risks Through*

Continued

considerations for agencies contemplating and planning actions.[123]

A. Affected Environment

Agencies should identify the affected environment to provide a basis for comparing the current and future state of the environment as affected by the proposed action or its reasonable alternatives.[124] As discussed in Section IV(D), the current and projected future state of the environment without the proposed action (*i.e.,* the no action alternative) represents the reasonably foreseeable affected environment. In considering the effects of climate change on a proposed action, the agency should describe the affected environment for the proposed action based on the best available climate change reports,[125] which often project at least two possible future emissions scenarios.[126] The temporal bounds for the description of the affected environment are determined by the projected initiation of implementation and the expected life of the proposed action and its effects.[127]

B. Effects

The analysis of climate change effects should focus on those aspects of the human environment that are impacted by the agency's potential action (*i.e.,* the proposed action or its alternatives) and climate change. The analysis also should consider how climate change can make a resource, ecosystem, human community, or structure more vulnerable to many types of effects and lessen its resilience to other environmental effects. This increase in vulnerability can exacerbate the environmental effects of potential actions, including environmental justice impacts. For example, a proposed action or its alternatives may require water from a stream that has diminishing quantities of available water because of decreased snow pack in the mountains, or add heat to a water body that is already warming due to increasing atmospheric temperatures. Such considerations are squarely within the scope of NEPA and can inform decisions on siting, whether to proceed with and how to design potential actions and reasonable alternatives, and to eliminate or mitigate effects exacerbated by climate change. They also can inform possible adaptation measures to address the effects of climate change, ultimately enabling the selection of smarter, more resilient actions.

C. Using Available Assessments and Scenarios To Assess Present and Future Impacts

In accordance with NEPA's rule of reason and standards for obtaining information regarding reasonably foreseeable effects on the human environment, agencies may summarize and incorporate by reference relevant scientific literature concerning the physical effects of climate change.[128] For example, agencies may summarize and incorporate by reference the relevant chapters of the most recent national climate assessments or reports from the USGCRP and the IPCC.[129] Particularly relevant to some proposed actions and reasonable alternatives are the most current reports on climate change effects on water resources, ecosystems, vulnerable communities, agriculture and forestry, health, coastlines, and ocean and arctic regions in the United States.[130]

Agencies should remain aware of the evolving body of scientific information as more refined estimates of the effects of climate change, both globally and at a localized level, become available.[131] Agencies should use the most up-to-date scientific projections available, identify any methodologies and sources used, and where relevant, disclose any relevant limitations of studies, climate models, or projections they rely on.[132]

In addition to considering climate change effects at the relevant global and national levels, agencies should identify and use information on future projected GHG emissions scenarios to evaluate potential future impacts (such as flooding, high winds, extreme heat, and other climate change-related impacts) and what those impacts will mean for the physical and other relevant conditions in the affected area. Such information should help inform development of the proposed action and alternatives, including by ensuring that proposed actions and alternatives consider appropriate resilience measures, environmental justice issues, and existing State, Tribal, or local adaptation plans. When relying on a single study or projection, agencies should consider any relevant limitations and discuss them.[133]

D. Resilience and Adaptation

As discussed in Section III(B), climate change presents risks to a wide array of potential actions across a range of sectors. Agencies should consider climate change effects on the environment and on proposed actions in assessing vulnerabilities and resilience to the effects of climate change such as increasing sea level, drought, high intensity precipitation events, increased fire risk, or ecological change. Consistent with NEPA, environmental reviews should provide relevant information that agencies can use to consider siting issues, the initial project design and consistency with existing State, Tribal, and local adaptation plans, as well as reasonable alternatives with preferable overall environmental outcomes and improved resilience to climate effects.[134] Climate resilience and adaptation may be particularly relevant to the description of a proposed action, the alternatives analysis, and the description of environmental consequences. For instance, agencies should consider increased risks associated with development in floodplains, avoiding such development wherever there is a practicable alternative, as required by Executive Orders 11988 and 13690.[135] Agencies also should consider the likelihood of increased temperatures and more frequent or severe storm events over the lifetime of the proposed action, and reasonable alternatives (as well as the

Adaptation Actions, https://nca2018.globalchange.gov/chapter/28/.

[123] *See* E.O. 14008, *supra* note 7 and E.O. 14057, *supra* note 7.

[124] *See* 40 CFR 1502.15 (providing that environmental impact statements shall succinctly describe the environmental impacts on the area(s) to be affected or created by the alternatives under consideration). Note, however, that GHG emissions have effects that are global in scale.

[125] *See, e.g.,* USGCRP, Fourth National Climate Assessment, *supra* note 28 (regional impacts chapters).

[126] *See, e.g., id.* (considering a low future global emissions scenario and a high emissions scenario).

[127] CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act, supra* note 79. Agencies also should consider their work under relevant executive orders. *See* E.O. 13990, *supra* note 16; E.O. 14008, *supra* note 7; E.O. 14057, *supra* note 7. Note that the effects of GHG emissions by their nature can be very long-lasting.

[128] *See* 40 CFR 1501.12 (material may be incorporated by reference if it is reasonably available for inspection by potentially interested persons during public review and comment).

[129] *See* USGCRP, Fourth National Climate Assessment, *supra* note 28; IPCC, *The Physical Science Basis, supra* note 28.

[130] *See* USGCRP, Fourth National Climate Assessment, *supra* note 28. Agencies should consider the latest final assessments and reports as they are updated.

[131] *See, e.g., id.*

[132] *See* 40 CFR 1502.23. Agencies can consult *www.data.gov/climate/portals* for model data archives, visualization tools, and downscaling results.

[133] *Id.*

[134] See 40 CFR 1502.16(a)(5), 1506.2(d).

[135] *See* E.O. 11988, *Floodplain Management,* 42 FR 26951 (May 24, 1977), *http://www.archives.gov/federal-register/codification/executive-order/11988.html;* E.O. 13690, *Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input,* 80 FR 6425 (Jan. 30, 2015), *https://www.federalregister.gov/d/2015-02379* (reinstated by E.O. 14030, *Climate-Related Financial Risk,* 86 FR 27967 (May 20, 2021), *https://www.federalregister.gov/d/2021-11168*).

no-action alternative).[136] For example, an agency considering a proposed development of transportation infrastructure on a coastal barrier island should consider climate change effects on the environment and, as applicable, consequences of rebuilding where sea level rise and more intense storms will shorten the projected life of the project and change its effects on the environment.[137]

Agencies should integrate the NEPA review process with the agency's planning, siting, and design efforts at the earliest possible time that would allow for a meaningful analysis.[138] Agencies may incorporate information developed during early planning processes that precede a NEPA review into the NEPA review. Decades of NEPA practice have shown that integrating environmental considerations with the planning processes provides useful information that program and project planners can consider in designing the proposed action, alternatives, and potential mitigation measures.

Agencies also may consider co-benefits of the proposed action, alternatives, and potential mitigation measures for human health, economic and social stability, ecosystem services, or other benefits that increase climate change preparedness or resilience. Individual agency adaptation plans and interagency adaptation strategies, such as agency Climate Adaptation Plans, the National Fish, Wildlife and Plants Climate Adaptation Strategy, and the National Action Plan: Priorities for Managing Freshwater Resources in a Changing Climate, provide other good examples of the type of relevant and useful information that agencies can consider.[139]

Considering the effects of climate change on a proposed action, and reasonable alternatives (as well as the no-action alternative), also helps to develop potential mitigation measures to reduce climate risks and promote resilience and adaptation. Where the analysis identifies climate-related risks to a proposed action or to the area affected by the proposed action, the agency should consider possible resilience and adaptation measures—including measures consistent with State, Tribal, or local adaptation plans—that could be employed to manage those effects. For example, where one or more climate effects could impair the operation of the proposed action, the agency should identify possible adaptation measures to enhance the action's climate resilience. The agency should indicate whether the proposed action includes measures to adapt to climate change and, if so, describe those measures and the climate projections that informed them. The agency also should consider whether any potential measures undertaken to address a proposed action's climate risk could result in any undesirable or unintended consequences.[140]

In addition, agencies should consider their ongoing efforts to incorporate environmental justice principles into their programs, policies, actions, and activities, including the environmental justice strategies required by Executive Orders 12898 and 14008, and consider whether the effects of climate change in association with the effects of the proposed action may result in disproportionately high and adverse effects on communities with environmental justice concerns, which often include communities of color, low-income communities, and Tribal Nations and Indigenous communities, in the area affected by the proposed action.[141] Federal agencies should identify any communities with environmental justice concerns, including communities of color, low-income communities, and Tribal Nations and Indigenous communities, impacted by the proposed action, and consider how impacts from the proposed action could potentially amplify climate change-related hazards such as storm surge, heat waves, drought, flooding, and sea level change.[142] Moreover, Executive Order 13985 calls for an all-of-government approach to advancing equity for underserved populations, including rural communities and persons with disabilities. Agencies should meaningfully engage with affected communities regarding their proposed actions and consider the effects of climate change on vulnerable communities in designing the action or selection of alternatives, including alternatives that can reduce disproportionate effects on such communities. For example, chemical facilities located near the coastline could have increased risk of spills or leaks due to sea level rise or increased storm surges, putting local communities and environmental resources at greater

[136] *See, e.g.,* E.O. 14030, *supra* note 135.

[137] *See* U.S. Dep't of Transp., FHWA–HEP–15–007, *Assessing Transportation Vulnerability to Climate Change Synthesis of Lessons Learned and Methods Applied, Gulf Coast Study, Phase 2* (Oct. 2014), *http://www.fhwa.dot.gov/environment/climate_change/adaptation/ongoing_and_current_research/gulf_coast_study/phase2_task6/fhwahep15007.pdf* (focusing on the Mobile, Alabama region); U.S. Climate Change Science Program, *Impacts of Climate Change and Variability on Transportation Systems and Infrastructure, Gulf Coast Study, Phase I* (Mar. 2008), *https://downloads.globalchange.gov/sap/sap4-7/sap4-7-final-all.pdf* (focusing on a regional scale in the central Gulf Coast). Information about the Gulf Coast Study is available at *https://www.fhwa.dot.gov/environment/sustainability/resilience/ongoing_and_current_research/gulf_coast_study/index.cfm; see also* Third National Climate Assessment, *supra* note 30, Chapter 28, *Adaptation,* 675, *http://nca2014.globalchange.gov/report/response-strategies/adaptation#intro-section-2* (noting that Federal agencies in particular can facilitate climate adaptation by ''ensuring the establishment of [F]ederal policies that allow for 'flexible' adaptation efforts and take steps to avoid unintended consequences'').

[138] *See* 42 U.S.C. 4332 (''agencies of the Federal Government shall . . . utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making''); 40 CFR 1501.2 (''Agencies should integrate the NEPA process with other planning and authorization processes at the earliest reasonable time. . . .''); *see also* CEQ, Memorandum for Heads of Federal Departments and Agencies, *Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act* (''Efficient Environmental Reviews''), 77 FR 14473 (Mar. 12, 2012), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Improving_NEPA_Efficiencies_06Mar2012.pdf.*

[139] *See https://www.sustainability.gov/progress.html* for agency sustainability plans and agency adaptation plans; *see also* U.S. Climate Resilience Tool Kit, *National Fish, Wildlife, and Plants Climate Adaptation Strategy, https://toolkit.climate.gov/tool/national-fish-wildlife-and-plants-climate-adaptation-strategy;* Interagency Climate Adaptation Task Force, *National Action Plan: Priorities for Managing Freshwater Resources in a Changing Climate* (Oct. 2011), *https://www.epa.gov/sites/default/files/2016-12/documents/2011_national_action_plan_1.pdf;* and CEQ, Off. of the Federal Chief Sustainability Officer, *Climate Resilient Infrastructure and Operations, https://www.sustainability.gov/adaptation/.*

[140] *See, e.g.,* Jane Ebinger & Walter Vergara, World Bank, *Climate Impacts on Energy Systems: Key Issues for Energy Sector Adaptation,* 89–90 (2011), *https://openknowledge.worldbank.org/bitstream/handle/10986/2271/600510PUB0ID181mpacts09780821386972.pdf?sequence=1&isAllowed=y* (describing the potential for adaptation-related decision errors including ''maladaptation,'' in which actions are taken that constrain the ability of other decision makers to manage the impacts of climate change).

[141] *See infra Section* VI(E); E.O. 12898, *Federal Actions to Address Environmental Justice in Minority and Low-Income Populations,* 59 FR 7629 (Feb. 16, 1994), *https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf,* as amended by E.O. 14008, *supra* note 7, section 219 (''Agencies shall make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.''); CEQ, *Environmental Justice Guidance Under the National Environmental Policy Act* (Dec. 1997), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf.*

[142] *See, e.g.,* Federal Interagency Working Group on Environmental Justice & NEPA Committee, *Promising Practices for EJ Methodologies in NEPA Reviews* (Mar. 2016), *https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf.*

risk. Increased resilience could minimize such potential future effects. Finally, considering climate change preparedness and resilience can help ensure that agencies evaluate the potential for generating additional GHGs if a project has to be replaced, repaired, or modified, and minimize the risk of expending additional time and funds in the future.

VI. Traditional NEPA Tools and Practices

A. Scoping and Framing the NEPA Review

Scoping helps agencies integrate decision making, avoid duplication, and focus NEPA reviews.[143] In scoping, the agency determines the issues that the NEPA review will address and identifies the effects related to the proposed action that the analysis will consider.[144] An agency can use the scoping process to help it determine whether analysis is relevant and, if so, the extent of analysis appropriate for a proposed action.[145] When scoping for the climate change issues associated with the proposed action, and reasonable alternatives (as well as the no-action alternative), the nature, location, timeframe, and type of the proposed action and the extent of its effects will help determine the degree to which to consider climate projections, including whether climate change considerations warrant emphasis, detailed analysis, and disclosure.[146]

Consistent with this guidance, agencies may develop their own agency-specific practices and guidance for framing NEPA reviews. Grounded in the principles of proportionality and the rule of reason, such practices and guidance can help an agency determine the extent to which it should explore climate change effects in its decision-making processes and will assist in the analysis of the no action and proposed alternatives and mitigation.[147] The agency should explain such a framing process and its application to the proposed action to the decision makers and the public during the NEPA review and in the EA or EIS document.

B. Incorporation by Reference

Agencies should consider using incorporation by reference in considering GHG emissions or where an agency is considering the implications of climate change for the proposed action and its environmental effects. The NEPA review for a specific action can incorporate by reference earlier programmatic studies or information such as management plans, inventories, assessments, and research, as well as any relevant programmatic or other NEPA reviews.[148] Agencies should identify situations where prior studies or NEPA analyses are likely to cover emissions or adaptation issues, in whole or in part, and incorporate them by reference in NEPA documents (including tiered NEPA documents) where appropriate. Agencies should confirm that prior studies or programmatic documents were conducted within a reasonable timeframe of the proposed action under consideration such that underlying assumptions are still applicable. Incorporation by reference may be helpful when larger scale analyses have considered climate change effects and GHG emissions, and calculating GHG emissions for a specific action would provide only limited information beyond the information already collected and considered in the larger scale analyses.

Agencies should use the scoping process to consider whether they should incorporate by reference GHG analyses from other programmatic studies, action specific NEPA reviews, or programmatic NEPA reviews to avoid duplication of effort. Furthermore, agencies should engage other agencies and stakeholders with knowledge of related actions to participate in the scoping process to identify relevant GHG and adaptation analyses from other actions or programmatic NEPA documents. In addition, agencies are encouraged to use searchable databases, websites, GIS tools, and other technology to share NEPA reviews with relevant agencies, stakeholders, and the public.

C. Programmatic or Broad-Based Studies and NEPA Reviews

In the context of long-range energy, transportation, resource management, or similar programs or strategies, an agency may decide that it would be useful and efficient to provide an aggregate analysis of GHG emissions or climate change effects in a programmatic analysis and then incorporate it by reference into future NEPA reviews. These broad analyses may occur through programmatic NEPA documents, or they may occur through other processes by which agencies conduct analyses or studies at the national or other broad scale level (*e.g.,* landscape, regional, or watershed) to assess the status of one or more resources or to determine trends in changing environmental conditions.[149] In appropriate circumstances, agencies may rely on programmatic analyses to make project-level NEPA reviews more efficient by evaluating and analyzing effects at an earlier stage and at a broader level than project-specific actions. Agencies also can use programmatic analysis to analyze emissions from related activities in a given region or sector, or to serve as benchmark against which agencies can measure site-specific actions.[150]

A tiered, analytical decision-making approach using a programmatic NEPA review is used for many types of Federal actions and can be particularly relevant to addressing proposed land, aquatic, and other resource management plans. Under such an approach, an agency conducts a broad-scale programmatic NEPA analysis for decisions such as establishing or revising the USDA Forest Service land management plans, Bureau of Land Management resource

[143] *See* 40 CFR 1501.9 (''Agencies shall use an early and open process to determine the scope of issues for analysis in an environmental impact statement, including identifying the significant issues and eliminating from further study non-significant issues.''); *see also* CEQ, Efficient Environmental Reviews, *supra* note 139 (the CEQ Regulations explicitly require scoping for preparing an EIS; however, agencies also can take advantage of scoping whenever preparing an EA).

[144] *See* 40 CFR 1500.4(d), 1500.4(i), 1501.9(a) and (e).

[145] *See* 40 CFR 1501.9 (The agency preparing the NEPA analysis must use the scoping process to, among other things, determine the scope and identify the significant issues to be analyzed in depth); CEQ, *Memorandum for General Counsels, NEPA Liaisons, and Participants in Scoping* (Apr. 30, 1981), *https://www.energy.gov/sites/default/files/nepapub/nepa_documents/RedDont/G-CEQ-scopingguidance.pdf.*

[146] As noted *infra* in section VI(E), to address environmental justice concerns, agencies should use the scoping process to identify potentially affected communities and provide early notice of opportunities for public engagement.

[147] *See, e.g.,* U.S. Forest Service, *The Science of Decisionmaking: Applications for Sustainable Forest and Grassland Management in the National Forest System* (2013), *https://www.fs.usda.gov/research/treesearch/44326;* U.S. Forest Service, *The Comparative Risk Assessment Framework and Tools* (2010), *https://www.fs.usda.gov/treesearch/pubs/34561;* Julien Martin, et al., *Structured decision making as a conceptual framework to identify thresholds for conservation and management,* 19 Ecological Applications 1079–90 (2009), *https://pubs.er.usgs.gov/publication/70036878.*

[148] *See* 40 CFR 1502.4(b), 1501.12.

[149] Programmatic studies may be distinct from programmatic NEPA reviews in which the programmatic action itself is subject to NEPA requirements. *See* CEQ, *Memorandum for Heads of Federal Departments and Agencies, Effective Use of Programmatic NEPA Reviews,* section I(A), 9 (Dec. 18, 2014), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Effective_Use_of_Programmatic_NEPA_Reviews_Final_Dec2014_searchable.pdf* (discussing non-NEPA types of programmatic analyses such as data collection, assessments, and research, which previous NEPA guidance described as joint inventories or planning studies).

[150] For instance, where a planning level programmatic review of GHG emissions indicates that a collection of individual actions will collectively reduce GHG emissions, the NEPA analyses for the individual actions can demonstrate that the action is consistent with the emission reductions examined in the programmatic review.

management plans, or Natural Resources Conservation Service conservation programs. Subsequent NEPA analyses for proposed site-specific decisions—such as proposed actions that are consistent with land, aquatic, and other resource management plans—may be tiered from the broader programmatic analysis, drawing upon its basic framework analysis to avoid repeating analytical efforts for each tiered decision. Examples of project- or site-specific actions that may benefit from being able to tier to a programmatic NEPA review include: siting and constructing transmission lines; siting and constructing wind, solar or geothermal projects; conducting wildfire risk reduction activities such as prescribed burns or hazardous fuels reduction; approving grazing leases; granting rights-of-way; and approving site-specific resilience or climate adaptation actions.

A programmatic NEPA review also may serve as an efficient mechanism in which to assess Federal agency efforts to adopt broad-scale sustainable practices for energy efficiency, GHG emissions avoidance and emissions reduction measures, petroleum product use reduction, and renewable energy use, as well as other sustainability practices.[151] While broad department- or agency-wide goals may be of a far larger scale than a particular program, policy, or proposed action, an analysis that informs how a particular action affects that broader goal can be of value.

D. Using Available Information

Agencies should make decisions using current scientific information and methodologies. CEQ does not necessarily expect agencies to fund and conduct original climate change research to support their NEPA analyses or for agencies to require project proponents to do so. Agencies should exercise their discretion to select and use the tools, methodologies, and scientific and research information that are of high quality and available to assess relevant effects, alternatives, and mitigation.[152]

E. Environmental Justice Considerations

Numerous studies have found that environmental hazards (including those driven by climate change) are more prevalent in and pose particular risks to areas where people of color and low-income populations represent a higher fraction of the population compared with the general population.[153] The NEPA process calls for identifying potential environmental justice-related issues and meaningfully engaging with communities that proposed actions and reasonable alternatives (as well as the no-action alternative) may affect.

Agencies should be aware of the ongoing efforts to address the effects of climate change on human health and vulnerable communities.[154] Certain groups, including children, the elderly, communities with environmental justice concerns, which often include communities of color, low-income communities, Tribal Nations and Indigenous communities, and underserved communities are more vulnerable to climate-related health effects and may face barriers to engaging on issues that disproportionately affect them. CEQ recommends that agencies regularly engage environmental justice experts and leverage the expertise of the White House Environmental Justice Interagency Council[155] to identify approaches to avoid or minimize adverse effects on communities of color and low-income communities.[156]

When assessing environmental justice considerations in NEPA analyses, agencies should use the scoping process to identify potentially affected communities and provide early notice of opportunities for public engagement. This is important for all members of the public and stakeholders, but especially for communities of color and low-income communities, including those who have suffered disproportionate public health or environmental harms and those who are at increased risk for climate change-related harms. Agencies should engage such communities early in the scoping and project planning process to understand any unique climate-related risks and concerns. Agencies also should use the NEPA process to identify and analyze reasonably foreseeable effects, reasonable alternatives, and measures to avoid or minimize any such effects.

F. Monetizing Costs and Benefits

NEPA does not require a cost-benefit analysis where all monetized benefits and costs are directly compared. In a NEPA review, the weighing of the merits and drawbacks of the various alternatives need not be displayed using a monetary cost-benefit analysis and should not be when there are important qualitative considerations.[157] Using the SC–GHG to provide an estimate of the cost to society from GHG emissions—or otherwise monetizing discrete costs or benefits of a proposed Federal action—does not necessitate conducting a benefit-cost analysis in NEPA documents. As described in Section IV(B), the SC–GHG estimates are useful information disclosure metrics that can help decision makers and the public understand and contextualize GHG emissions and climate damages. Agencies can use the SC–GHG to provide information on climate impacts even if other costs and benefits cannot be quantified or monetized.

If an agency determines that a monetary cost-benefit analysis is appropriate and relevant to the choice among different alternatives the agency is considering, the agency may include the analysis in or append it to the NEPA document, or incorporate it by reference[158] as an aid in evaluating the environmental consequences. For example, a rulemaking could have useful information for the NEPA review in an associated regulatory impact analysis, which the agency could incorporate by reference in a NEPA document.[159]

When using a monetary cost-benefit analysis, just as with tools to quantify emissions, an agency should disclose the assumptions, alternative inputs, and

[151] *See* E.O. 14057, *supra* note 7 (establishing government-wide and agency GHG reduction goals and targets).

[152] *See* 40 CFR 1502.23 (requiring agencies to ensure the professional and scientific integrity of the discussions and analyses in environmental impact statements).

[153] *See, e.g.,* USGCRP, Fourth National Climate Assessment, *supra* note 28, Volume II, 342 and 1077–78; USGCRP, *The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment* (Apr. 2016), *https://health2016.globalchange.gov/downloads;* EPA, *Six Impacts, supra* note 41, at 8 (Figure ES.2), *https://www.epa.gov/system/files/documents/2021-09/climate-vulnerability_september-2021_508.pdf.*

[154] USGCRP, *The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment, supra* note 153.

[155] For more information on the White House Environmental Justice Interagency Council, *see https://www.energy.gov/lm/white-house-environmental-justice-interagency-council-resources.*

[156] President's Memorandum for the Heads of All Departments and Agencies, Executive Order on Federal Actions to Address Environmental Justice in Minority and Low-Income Populations (Feb. 11, 1994), *https://www.epa.gov/sites/production/files/2015-02/documents/clinton_memo_12898.pdf;* CEQ, *Environmental Justice Guidance Under the National Environmental Policy Act* (Dec. 10, 1997), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf.*

[157] *See* 40 CFR 1502.22.

[158] *See* 40 CFR 1501.12 (material may be cited if it is reasonably available for inspection by potentially interested persons within the time allowed for public review and comment).

[159] For example, the regulatory impact analysis was used as a source of information and aligned with the NEPA review for Corporate Average Fuel Economy (CAFE) standards. *See* Nat'l Highway Traffic Safety Admin., *Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2017–2025, Final Environmental Impact Statement*, Docket No. NHTSA–2011–0056, section 5.3.2 (July 2012), *https://www.nhtsa.gov/corporate-average-fuel-economy/environmental-impact-statement-cafe-standards-2017-2025.*

levels of uncertainty associated with such analysis. Finally, if an agency chooses to monetize some but not all effects of an action, the agency providing this additional information should explain its rationale for doing so.[160]

VII. Conclusions and Effective Date

Agencies should use this guidance to inform the NEPA review for all new proposed actions. Agencies should exercise judgment when considering whether to apply this guidance to the extent practicable to an on-going NEPA process. CEQ does not expect agencies to apply this guidance to concluded NEPA reviews and actions for which a final EIS or EA has been issued. Agencies should consider applying this guidance to actions in the EIS or EA preparation stage if this would inform the consideration of alternatives or help address comments raised through the public comment process.

Dated: January 4, 2023.

Brenda Mallory,

Chair.

[FR Doc. 2023–00158 Filed 1–6–23; 8:45 am]

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[160] For example, the information may be responsive to public comments or useful to the decision maker in further distinguishing between alternatives and mitigation measures. In all cases, the agency should ensure that its consideration of the information and other factors relevant to its decision is consistent with applicable statutory or other authorities, including requirements for the use of cost-benefit analysis.

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0112]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Federal Direct Loan Program Regulations for Forbearance and Loan Rehabilitation

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before February 8, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Direct Loan Program Regulations for Forbearance and Loan Rehabilitation.

OMB Control Number: 1845–0119.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: Individuals and households.

Total Estimated Number of Annual Responses: 129,027.

Total Estimated Number of Annual Burden Hours: 35,094.

Abstract: This information collection for the Direct Loan (DL) Program regulations is related to regulations for forbearance in § 685.205 and reasonable and affordable loan rehabilitation in § 685.211. The Department of Education is requesting an extension without change of the current burden calculated for this information collection. Due to the COVID–19 pandemic and loan payment pause, there is not sufficient information to estimate burden changes. These regulations provide additional flexibilities for DL borrowers and permit oral requests for forbearance, as well as allow a borrower to object to the initially established reasonable and affordable loan repayment amount. In addition, if a borrower incurs changes to his or her financial circumstances, the borrower can provide supporting documentation to change the amount of the reasonable and affordable loan monthly repayment amount. There has been no change to the regulatory language.

Dated: January 4, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–00160 Filed 1–6–23; 8:45 am]

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ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: U.S. Election Assistance Commission.

ACTION: Sunshine Act notice; notice of public meeting agenda.

SUMMARY: Public Meeting: U.S. Election Assistance Commission Technical Guidelines Development Committee Annual Meeting.

DATES: Thursday, January 26, 2023, 1:00–4:30 p.m. ET.

ADDRESSES: The virtual meeting is open to the public and will be livestreamed on the U.S. Election Assistance Commission YouTube Channel: *https://www.youtube.com/channel/UCpN6i0g2rlF4ITWhwvBwwZw.*

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct the virtual annual meeting of the EAC Technical Guidelines Development Committee (TGDC) to discuss regular business of the board.

Agenda: The EAC and TGDC members will hold a virtual meeting to discuss program updates for EAC Testing and Certification and the National Institute of Standards and Technology (NIST) Voting Program. The meeting will also include the status of the Voluntary Electronic Pollbook Pilot Program, the annual review of proposed changes to the Voluntary Voting System Guidelines (VVSG), as well as public feedback from the October 2022 Path to

End-to-End (E2E) Protocols for Voting Systems workshop and next steps.

The full agenda will be posted in advance on the EAC website: *https://www.eac.gov.*

Background

Section 221 of the Help America Vote Act (HAVA) of 2002 (52 U.S.C. 20971(b)) requires that the EAC to adopt voluntary voting system guidelines, and to provide for the testing, certification, decertification, and recertification of voting system hardware and software.

The TGDC was established in accordance with the requirements of Section 221 of the Help America Vote Act of 2002 (Pub. L. 107–252, codified at 52 U.S.C. 20961), to act in the public interest to assist the Executive Director of the EAC in the development of voluntary voting system guidelines.

Status

This meeting will be open to the public.

Camden Kelliher,

Associate Counsel, U.S. Election Assistance Commission.

[FR Doc. 2023–00285 Filed 1–5–23; 4:15 pm]

BILLING CODE P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: U.S. Election Assistance Commission.

ACTION: Sunshine Act notice; notice of public meeting agenda.

SUMMARY: Public Meeting: U.S. Election Assistance Commission Technical Guidelines Development Committee Annual Meeting.

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FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

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STATUS: This meeting will be open to the public.

Camden Kelliher,

Associate Counsel, U.S. Election Assistance Commission.

[FR Doc. 2023–00285 Filed 1–5–23; 4:15 pm]

BILLING CODE P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: The Department of Energy hereby publishes a notice of open meeting of the Secretary of Energy Advisory Board (SEAB). This meeting will be held virtually for members of the public and SEAB members.

DATES: Tuesday, January 24, 2023; 12:30 p.m.–1:30 p.m. Eastern Time.

ADDRESSES: Virtual meeting for members of the public, Board members, Department of Energy (DOE) representatives, agency liaisons, and Board support staff. Registration is required by registering at the SEAB January 24 meeting page at: *www.energy.gov/seab/seab-meetings.*

FOR FURTHER INFORMATION CONTACT: David Borak, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; email: *seab@hq.doe.gov;* telephone: (202) 586–5216.

SUPPLEMENTARY INFORMATION:

Background: The Board was established to provide advice and recommendations to the Secretary on the Administration's energy policies; the Department's basic and applied research and development activities; economic and national security policy; and other activities as directed by the Secretary.

Purpose of the Meeting: This is the seventh meeting of Secretary Jennifer M. Granholm's SEAB.

Tentative Agenda: The meeting will start at 12:30 p.m. Eastern Time on January 24, 2023. Agenda items for this meeting include a discussion of draft recommendations on grid resiliency and public comments. The meeting will conclude at approximately 1:30 p.m. The meeting times and content are subject to change. Meeting materials can be found here: *https://www.energy.gov/seab/seab-meetings.*

Public Participation: The meeting is open to the public via a virtual meeting option. Individuals who would like to attend must register for the meeting here: *https://www.energy.gov/seab/seab-meetings.*

Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the meeting. Approximately 15 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed three minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so via email, *seab@hq.doe.gov,* no later than 5:00 p.m. on Monday, January 23, 2023.

Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to David Borak, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, or email to: *seab@hq.doe.gov.*

Minutes: The minutes of the meeting will be available on the SEAB website or by contacting Mr. Borak. He may be reached at the above postal address or email address, or by visiting SEAB's website at *www.energy.gov/seab.*

Signed in Washington, DC, on January 3, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–00138 Filed 1–6–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2394–008; ER10–2395–008.
Applicants: Colorado Power Partners, BIV Generation Company, L.L.C.
Description: Updated Market Power Analysis for Northwest Region of BIV Generation Company, L.L.C., et al.
Filed Date: 12/28/22.
Accession Number: 20221228–5221.
Comment Date: 5 p.m. ET 1/18/23.

Docket Numbers: ER11–2753–009; ER12–1316–008.
Applicants: Silver State Solar Power North, LLC, Cedar Point Wind, LLC.
Description: Triennial Market Power Analysis for Northwest Region of Cedar Point Wind, LLC, et al.
Filed Date: 12/29/22.
Accession Number: 20221229–5255.
Comment Date: 5 p.m. ET 2/27/23.

Docket Numbers: ER17–1217–002.
Applicants: Total Gas & Power North America, Inc.
Description: Triennial Market Power Analysis for Northwest Region of TotalEnergies Gas & Power North America, Inc.
Filed Date: 12/29/22.
Accession Number: 20221229–5258.
Comment Date: 5 p.m. ET 2/27/23.

Docket Numbers: ER20–2197–003.
Applicants: Atlantic City Electric Company, PJM Interconnection, L.L.C.
Description: Compliance filing: Atlantic City Electric Company submits tariff filing per 35: ACE and Delmarva Supplemental Compliance Filing ER20–2197 & ER20–2198 to be effective 9/1/2020.
Filed Date: 12/29/22.
Accession Number: 20221229–5100.
Comment Date: 5 p.m. ET 1/19/23.

Docket Numbers: ER22–1395–000.
Applicants: Public Service Company of New Mexico.
Description: Refund Report: Refund Report to be effective N/A.
Filed Date: 12/29/22.
Accession Number: 20221229–5227.
Comment Date: 5 p.m. ET 1/19/23.

Docket Numbers: ER23–101–001.
Applicants: North East Offshore, LLC.
Description: Market: Market Base Rate Triennial Review to be effective 12/30/2022.
Filed Date: 12/29/22.
Accession Number: 20221229–5208.
Comment Date: 5 p.m. ET 2/27/23.

Docket Numbers: ER23–102–001.
Applicants: Revolution Wind, LLC.
Description: Market: Market Base Rate Triennial Review to be effective 12/30/2022.
Filed Date: 12/29/22.
Accession Number: 20221229–5212.
Comment Date: 5 p.m. ET 2/27/23.

Docket Numbers: ER23–103–001.
Applicants South Fork Wind, LLC.
Description: Market: Market Base Rate Triennial Review to be effective 12/30/2022.
Filed Date: 12/29/22.
Accession Number: 20221229–5211.
Comment Date: 5 p.m. ET 2/27/23.

Docket Numbers: ER23–104–001.
Applicants Sunrise Wind LLC.
Description: Market: Market Base Rate Triennial Review to be effective 12/30/2022.
Filed Date: 12/29/22.
Accession Number: 20221229–5217.
Comment Date: 5 p.m. ET 2/27/23.

Docket Numbers: ER23–337–001.
Applicants Southwest Power Pool, Inc.
Description: Tariff Amendment: 3599R1 Missouri Electric Commission NITSA NOA to be effective 1/1/2023.
Filed Date: 12/29/22.
Accession Number: 20221229–5098.
Comment Date: 5 p.m. ET 1/19/23.

Docket Numbers: ER23–739–000.
Applicants ISO New England Inc., Eversource Energy Service Company (as agent), New England Power Pool Participants Committee, The United Illuminating Company.
Description: § 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Revisions to Enable Treatment of Storage as Transmission-Only Asset—Part 1 of 2 to be effective 12/31/9998.
Filed Date: 12/29/22.
Accession Number: 20221229–5051.
Comment Date: 5 p.m. ET 1/19/23.

Docket Numbers: ER23–740–000.
Applicants Evergy Kansas Central, Inc.
Description: § 205(d) Rate Filing: Amendment, Market-Based Rate Tariff to be effective 2/13/2023.
Filed Date: 12/29/22.
Accession Number: 20221229–5061.
Comment Date: 5 p.m. ET 1/19/23.

Docket Numbers: ER23–741–000.
Applicants Evergy Metro, Inc.
Description: § 205(d) Rate Filing: Amendment, Market-Based Rate Tariff to be effective 2/27/2023.
Filed Date: 12/29/22.
Accession Number: 20221229–5064.
Comment Date: 5 p.m. ET 1/19/23.

Docket Numbers: ER23–742–000.
Applicants: Evergy Missouri West, Inc.
Description:: § 205(d) Rate Filing: Amendment, Market-Based Rate Tariff to be effective 2/27/2023.
Filed Date: 12/29/22.
Accession Number: 20221229–5067.
Comment Date: 5 p.m. ET 1/19/23.

Docket Numbers: ER23–743–000.
Applicants: ISO New England Inc., Eversource Energy Service Company (as agent),The United Illuminating Company, New England Power Pool Participants Committee.
Description:: § 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Revisions to Enable Treatment of Storage as Transmission-Only Assets—Part 2 of 2 to be effective 12/31/9998.
Filed Date: 12/29/22.
Accession Number: 20221229–5086.
Comment Date: 5 p.m. ET 1/19/23.

Docket Numbers: ER23–744–000.
Applicants: Occidental Power Marketing, L.P.
Description: Market: Occidental Power Marketing, L.P. Updated Market Power Analysis to be effective 12/30/2022.
*Filed Date:*12/29/22.
Accession Number: 20221229–5137.
Comment Date: 5 p.m. ET 2/27/23.

Docket Numbers: ER23–745–000.
Applicants: Occidental Power Services, Inc.
Description: Market: Occidental Power Services, Inc. Updated Market Power Analysis to be effective 12/30/2022.
Filed Date: 12/29/22.
Accession Number: 20221229–5138.
Comment Date: 5 p.m. ET 2/27/23.

Docket Numbers: ER23–746–000.
Applicants: OTCF, LLC.
Description: Market: OTCF, LLC Updated Market Power Analysis to be effective 12/30/2022.
Filed Date: 12/29/22.
Accession Number: 20221229–5139.
Comment Date: 5 p.m. ET 2/27/23.

Docket Numbers: ER23–747–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: First Revised ISA, Service Agreement No. 1435; Queue AC1–008_AC2–071_AG1–001 to be effective 11/29/2022.
Filed Date: 12/29/22.
Accession Number: 20221229–5144.
Comment Date: 5 p.m. ET 1/19/23.

Docket Numbers: ER23–748–000.
Applicants: Power 2 Profit Energy Solutions, Inc.
Description: Baseline eTariff Filing: Market-Based Rate Tariff Application to be effective 1/1/2023.
Filed Date: 12/29/22.
Accession Number: 20221229–5184.

Comment Date: 5 p.m. ET 1/19/23

Docket Numbers: ER23–749–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 6722; Queue No. AE1–155 to be effective 11/30/2022.

Filed Date: 12/29/22.

Accession Number: 20221229–5271.

Comment Date: 5 p.m. ET 1/19/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 29, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–00097 Filed 1–6–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1121–136]

Pacific Gas and Electric Company; Notice of Application for Amendment of License, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Proceeding:* Application for non-capacity amendment of license.

b. *Project No.:* 1121–136.

c. *Date Filed:* October 28, 2022.

d. *Licensee:* Pacific Gas and Electric Company.

e. *Name of Project:* Battle Creek Hydroelectric Project.

f. *Location:* On the mainstem Battle Creek, and on the North Fork and South Fork Battle Creek in Shasta and Tehama Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Licensee Contact:* Richard Doble, Pacific Gas and Electric Company, Mail Code N11D, P.O. Box 770000, San Francisco, CA 94177, (415) 260–2675, *Richard.Doble@PGE.com.*

i. *FERC Contact:* Rebecca Martin, (202) 502–6012, *Rebecca.martin@ferc.gov.*

j. *Deadline for filing comments, interventions, and protests:* January 30, 2023.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. The first page of any filing should include docket number P–1121–136. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Pacific Gas and Electric Company (licensee or PG&E) is requesting that its license for the Battle Creek Hydroelectric Project be amended to remove Inskip Diversion Dam, adjacent infrastructure, fish ladder, and approximately 30,000 to 56,000 cubic yards of sediment from behind the dam. No changes to long-term operations of the project are proposed. Erosion of the sluiceway and dam toe present a continuing facility safety risk. Inskip Canal and Powerhouse are currently offline, and there are no plans to bring them back online. PG&E notified the Commission of its intent not to relicense the project and no other entity has expressed an interest in relicensing the project. Inskip Diversion Dam would be removed and the inlet into Inskip Canal from Inskip Diversion Dam would be plugged. Once stored sediment is dredged and the dam is removed, the stream channel would be restored to a natural condition. Restoration of the channel is proposed upstream of the existing dam and would be designed to include a series of pools and riffles/steps/cascades to provide channel bed stability. Bank stabilization and revegetation would be implemented within the work area to ensure long-term stability of the restored stream banks.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the

requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: December 29, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–00100 Filed 1–6–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–458]

Grand River Dam Authority; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 1494–458.

c. *Date Filed:* September 2, 2022, as supplemented on September 13, 2022, and October 24, 2022.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Pensacola Project.

f. *Location:* The Pensacola Project is located on the Grand River in Mayes, Ottawa, Delaware, and Craig counties, Oklahoma; the non-project use is in Delaware County.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Tamara Jahnke, Grand River Dam Authority at (918) 610–9686 or *tamara.jahnke@grda.com*.

i. *FERC Contact:* Shana High at (202) 502–8674 or *shana.high@ferc.gov*.

j. *Deadline for filing motions to intervene and protests:* February 2, 2023.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–1494–458. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Grand River Dam Authority is requesting Commission authorization to permit Grand Lake RV Resort, LLC to expand its existing commercial docks, remove an existing retaining wall, repair an existing boat ramp, and install rip rap. As proposed, Grand Lake RV Resort, LLC would include seven docks that would accommodate 76 boats and 24 personal watercraft, two boat ramps, and riprap.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: January 3, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–00157 Filed 1–6–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC22–21–000]

Commission Information Collection Activities (FERC–555); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–555 (Preservation of Records for Public Utilities and Licensees, Natural Gas and

Oil Pipeline Companies) which will be submitted to the Office of Management and Budget (OMB) for a review of the information collection requirements.

DATES: Comments on the collection of information are due February 8, 2023.

ADDRESSES: Send written comments on FERC–555 to OMB through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB control number (1902–0098) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**.

Please submit copies of your comments (identified by Docket No. IC22–21–000) to the Commission as noted below. Electronic filing through *https://www.ferc.gov* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.
  - *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (Including Courier) Delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions:

OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain;* Using the search function under the ''Currently Under Review field,'' select Federal Energy Regulatory Commission; click ''submit'' and select ''comment'' to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: *https://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at: *https://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Type of Request: Three-year extension of the information collection requirements with no changes to the current reporting requirements.

Title: Preservation of Records for Public Utilities and Licensees, Natural Gas and Oil Pipeline Companies.

OMB Control No.: 1902–0098.

Abstract: The Commission collects the information to carry out its responsibilities described in sections 301, 304 and 309 of the Federal Power Act (FPA),[1] sections 8, 10 and 16 of the Natural Gas Act (NGA),[2] and in the Interstate Commerce Act (ICA).[3]

The regulations for preservation of records at 18 CFR parts 125, 225, and 356 establish retention periods and other requirements for applicable records. These requirements apply to the public utilities, licensees, natural gas companies, and oil pipeline companies that are subject to the Commission's jurisdiction. Regulated entities use these records as the basis for required rate filings and reports to the Commission. The Commission's audit staff will use the records during compliance reviews, and the Commission's enforcement staff will use the information during investigations. In addition, the Commission's staff may use the records for special analyses on subjects such as jurisdictional entities' responses to extreme weather events.

On January 8, 1999 the Commission issued AI99–2–000, an Accounting Issuance providing guidance on records storage media.[4] More specifically, the Commission gave each jurisdictional company the flexibility to select its own storage media. The storage media selected must have a life expectancy equal to the applicable record period unless the quality of the data transferred from one media to another with no loss of data would exceed the record period.

Types of Respondents: Electric utilities, licensees, natural gas companies, and oil pipeline companies

Estimate of Annual Burden: The Commission estimates the annual public reporting hour burden for the information collection as:

FERC–555—PRESERVATION OF RECORDS FOR PUBLIC UTILITIES AND LICENSEES, NATURAL GAS PIPELINE COMPANIES, AND OIL PIPELINE COMPANIES

Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hrs. & cost per response [5] (4)	Total annual burden hours & total annual cost (3) * (4) = (5)
509	1	509	5,218 hrs.; $453,966	2,655,962 hrs.; $231,068,694.

FERC estimates that the annual total non-hour record storage cost is $78,243,220. The average annual rounded non-hour storage cost per company is $153,719 (or $78,243,220/509). FERC staff derived these estimates using cost information submitted by a few jurisdictional filers.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: January 3, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–00156 Filed 1–6–23; 8:45 am]

BILLING CODE 6717–01–P

[1] 16 U.S.C. 825, 825c and 825h.

[2] 15 U.S.C. 717g, 717i, and 717*o*.

[3] 49 U.S.C. 60502.

[4] The Accounting Issuance can be found in the FERC eLibrary by typing the docket number (*i.e.,* AI99–2–000) in the eLibrary Search Form, within the field labeled ''Enter Docket Number.''

[5] Commission staff estimates that the average industry hourly cost for this information collection is approximated by the FERC 2021 average hourly costs for wages and benefits, *i.e.,* $87.00/hour.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–311–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: § 4(d) Rate Filing: Non-Conforming Agreement Update (Anadarko) to be effective 2/1/2023.
Filed Date: 12/27/22.
Accession Number: 20221227–5176.
Comment Date: 5 p.m. ET 1/9/23.

Docket Numbers: RP23–312–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 12.28.22 Negotiated Rates—Mercuria Energy America, LLC R–7540–02 to be effective 12/30/2022.
Filed Date: 12/28/22.
Accession Number: 20221228–5027.
Comment Date: 5 p.m. ET 1/9/23.

Docket Numbers: RP23–313–000.
Applicants: Sea Robin Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Annual Flowthrough Crediting Mechanism Filing 12–28–22 to be effective 2/1/2023.
Filed Date: 12/28/22.
Accession Number: 20221228–5067.
Comment Date: 5 p.m. ET 1/9/23.

Docket Numbers: RP23–314–000.
Applicants: Florida Gas Transmission Company, LLC.
Description: Compliance filing: Annual Accounting Report on 12–28–22 to be effective N/A.
Filed Date: 12/28/22.
Accession Number: 20221228–5069.
Comment Date: 5 p.m. ET 1/9/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 29, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–00103 Filed 1–6–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15289–000]

Peak Hour Power, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On October 25, 2022, Peak Hour Power, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Silver Creek Pumped Storage Project to be located at Blythe Township in Schuylkill County, Pennsylvania. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) a new upper reservoir with a surface area of 150 acres and a storage capacity of 8,000 to 10,000 acre-feet at a pool elevation between 1,650 to 1,700 feet above sea level (asl) and 1,750 to 1,800 feet asl created through construction of a roller-compacted concrete or rock-fill semi-circular dam and/or dike; (2) a new lower reservoir with a surface area of 100 acres and a storage capacity of 10,000 acre-feet at a pool elevation between 1,200 to 1,300 feet asl at the site of the existing Silver Creek reservoir and neighboring abandoned mine land; (3) a new 3,000-foot-long, 25-foot-diameter penstock connecting the upper reservoir and the underground powerhouse; (4) a new 250-foot-long, 70-foot-wide, 120-foot-high underground powerhouse containing two 125-megawatt (MW) pumping-generating units with a total installed capacity of 250 MW; (5) a new 2-mile-long, 230-kilovolt transmission line; and (6) appurtenant facilities. The proposed project would have an annual generation of 784,750 megawatt-hours.

Applicant Contact: Paul A. DiRenzo, Jr., Peak Hour Power, LLC, 214 Norwegian Woods Drive, Pottsville, PA 17901; email: *peakhourpower@comcast.net;* phone: (570) 617–7810.

FERC Contact: Woohee Choi; email: *woohee.choi@ferc.gov;* phone: (202) 502–6336.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/eFiling.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15289–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–15289) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: December 29, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–00098 Filed 1–6–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3079–020; ER11–2539–007; ER11–2540–007; ER11–2542–007.
Applicants: Rathdrum Power, LLC, Plains End II, LLC, Plains End, LLC, Tyr Energy LLC.
Description: Triennial Market Power Analysis for Northwest Region of Tyr Energy, LLC, et al.
Filed Date: 12/29/22.
Accession Number: 20221229–5347.
Comment Date: 5 p.m. ET 2/27/23.

Docket Numbers: ER11–4267–021; ER10–2414–017; ER11–113–015; ER11–4269–013; ER11–4694–011; ER12–1680–012; ER12–2007–002; ER14–1288–001; ER17–2084–005; ER20–967–003; ER21–44–005; ER22–937–002; ER22–938–002.
Applicants: New Market Solar ProjectCo 2, LLC, New Market Solar ProjectCo 1, LLC, Altavista Solar, LLC, Great Bay Solar II, LLC, Great Bay Solar I, LLC, Liberty Utilities (Granite State Electric) Corp., Algonquin Tinker Gen Co., Algonquin Windsor Locks LLC, Algonquin Energy Services Inc., Minonk Wind, LLC, GSG 6, LLC, Sandy Ridge Wind, LLC, Old Trail Wind Farm, LLC.
Description: Triennial Market Power Analysis for Northeast Region of Algonquin Energy Services Inc., et al.
Filed Date: 12/29/22.
Accession Number: 20221229–5346.
Comment Date: 5 p.m. ET 2/27/23.

Docket Numbers: ER22–2048–002.
Applicants: Skipjack Solar Center, LLC.
Description: Compliance filing: Response to Deficiency in ER22–2048 to be effective 6/8/2022.
Filed Date: 1/3/23.
Accession Number: 20230103–5046.
Comment Date: 5 p.m. ET 1/24/23.

Docket Numbers: ER23–759–000.
Applicants: Sempra Gas & Power Marketing, LLC.
Description: Market: Sempra Gas & Power Marketing Triennial/MBR Filing to be effective 1/4/2023.
Filed Date: 1/3/23.
Accession Number: 20230103–5213.
Comment Date: 5 p.m. ET 3/6/23.

Docket Numbers: ER23–761–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 607R43 Evergy Kansas Central, Inc. NITSA NOA to be effective 12/1/2022.
Filed Date: 1/3/23.
Accession Number: 20230103–5342.
Comment Date: 5 p.m. ET 1/24/23.

Docket Numbers: ER23–762–000.
Applicants: The Dayton Power and Light Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: The Dayton Power and Light Company submits tariff filing per 35.13(a)(2)(iii: The Dayton Power and Light Co. Application for CWIP and Abandonment Incentives to be effective 3/5/2023.
Filed Date: 1/3/23.
Accession Number: 20230103–5345.
Comment Date: 5 p.m. ET 1/24/23.

Docket Numbers: ER23–763–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3125R13 Basin Electric Power Cooperative NITSA and NOA to be effective 12/1/2022.
Filed Date: 1/3/23.
Accession Number: 20230103–5366.
Comment Date: 5 p.m. ET 1/24/23.

Docket Numbers: ER23–764–000.
Applicants: The Dayton Power and Light Company.
Description: Dayton Power and Light Company submits an Application of Incentive Rate Treatment for the Construction of Transmission Projects Required for NERC Reliability Criteria and other reliability improvements to the AES Ohio transmission system.
Filed Date: 12/30/22.
Accession Number: 20221230–5384.
Comment Date: 5 p.m. ET 1/20/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 3, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–00155 Filed 1–6–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1971–134]

Idaho Power Company; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 Code of Federal Regulations (CFR) part 380, Commission staff reviewed Idaho Power Company's application for a non-capacity amendment of the license for the Hells Canyon Project No. 1971 and have prepared an Environmental Assessment (EA). The licensee proposes to amend the license to replace and rebuild the Oxbow Fish Hatchery facilities. As proposed, the licensee would remove the Oxbow Fish Hatchery building, adjacent cooling unit, abandoned raceways in the northeast corner of the site, the abandoned raceway west of the existing hatchery building, holding ponds, sorting and spawning equipment, and a garage/storage building. The licensee proposes to add the following: (1) a larger set of holding ponds with an open-air structure covering them; (2) a masonry sorting and spawning building; (3) a wood-framed hatchery building; (4) a wood-framed shop and storage building; (5) a surface water intake structure and aeration tower; and (6) a new visitor kiosk that would include interpretive and educational information. The project consists of the Brownlee, Oxbow, and Hells Canyon developments, and is located on the Snake River in Adams and Washington counties, Idaho, and in Baker, Wallowa, and Malheur counties, Oregon. The project occupies federal lands administered by the U.S. Forest Service and the U.S. Bureau of Land Management.

The EA contains Commission staff's analysis of the potential environmental effects of the proposed amendment, and concludes that it would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC

Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Marybeth Gay at 202–502–6125 or *Marybeth.Gay@ferc.gov.*

Dated: December 29, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–00099 Filed 1–6–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–748–000]

Power 2 Profit Energy Solutions, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Power 2 Profit Energy Solutions, Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 23, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: January 3, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–00154 Filed 1–6–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Desert Southwest Region Ancillary Services—Rate Order No. WAPA–208

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed formula rates for Energy Imbalance Market services.

SUMMARY: The Desert Southwest Region (DSW) of the Western Area Power Administration (WAPA) proposes three new formula rates for Energy Imbalance Market (EIM) Administrative Service, Energy Imbalance (EI) Service, and Generator Imbalance (GI) Service for the Western Area Lower Colorado (WALC) Balancing Authority (BA). The new formula rates are necessary for participation in the California Independent System Operator's (CAISO) EIM. If adopted, the proposed formula rates under Rate Schedules DSW–EIM1T, DSW–EIM4T, and DSW–EIM9T will become effective April 5, 2023, and remain in effect through September 30, 2026. Publication of this **Federal Register** notice begins the formal process for the proposed formula rates.

DATES: A consultation and comment period will begin January 9, 2023 and end February 8, 2023. DSW will accept written comments any time during the consultation and comment period.

ADDRESSES: Written comments and requests to be informed of Federal Energy Regulatory Commission (FERC) actions concerning the proposed formula rates submitted by WAPA to FERC for approval should be sent to: Jack D. Murray, Regional Manager, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, or email: *dswpwrmrk@wapa.gov.* DSW will post information about the proposed formula rates, other changes, and written comments received to its website at: w*ww.wapa.gov/regions/DSW/Pages/DSW–EIM.aspx.*

FOR FURTHER INFORMATION CONTACT: Tina Ramsey, Rates Manager, Desert Southwest Region, Western Area Power Administration, (602) 605–2565 or email: *dswpwrmrk@wapa.gov.*

SUPPLEMENTARY INFORMATION: On October 25, 2022, FERC approved and confirmed the following formula rates for ancillary services, transmission losses, and unreserved use penalties applicable to the WALC BA on a final basis through September 30, 2026: Rate Schedules DSW–SD4 (Scheduling, System Control, and Dispatch), DSW–RS4 (Reactive Supply and Voltage Control), DSW–FR4 (Regulation and Frequency Response), DSW–EI4 (Energy Imbalance), DSW–SPR4 (Spinning Reserves), DSW–SUR4 (Supplemental Reserves), DSW–GI2 (Generator Imbalance), DSW–TL1 (Transmission Losses), and DSW–UU1 (Unreserved Use Penalties).[1]

To accommodate DSW's participation in the CAISO EIM, DSW is proposing new rate schedules for: (1) EIM Administrative Service (DSW–EIM1T), (2) EIM EI Service (DSW–EIM4T), and (3) EIM GI Service (DSW–EIM9T). The proposed new rate schedule for EIM Administrative Service would allow DSW to pass through the administrative costs and transaction fees resulting from WALC BA's participation in the CAISO EIM. The proposed new rate schedules

[1] Order Confirming and Approving Rate Schedules on a Final Basis, Docket No. EF21–6–000 (Oct. 25, 2022).

for EIM EI Service and EIM GI Service would allow DSW to pass through financial settlements incurred by the WALC BA. The CAISO EIM settles for EI Service and GI Service differently from DSW's existing rate schedules for similar services. In the EIM, the CAISO economically dispatches energy under its Tariff to meet the imbalances for loads and resources in multiple balancing authority areas. The EIM provides a centralized, automated, and region-wide dispatch for imbalances.

DSW's proposed formula rates for EIM Administrative Service, EI Service and GI Service would go into effect on April 5, 2023, and remain in effect through September 30, 2026, or until DSW changes the formula rates through another public rate process pursuant to 10 CFR part 903, whichever occurs first.

EIM Administrative Service

The CAISO assesses administrative service charges and transaction fees to recover the costs associated with operating the EIM and providing services to participants.

The proposed new rate schedule, DSW–EIM1T, would facilitate the pass through of CAISO EIM administrative service charges and transaction fees to DSW transmission customers and ensure the WALC BA remains revenue neutral. If placed into effect, this rate schedule will align with WAPA's Tariff and apply when the WALC BA participates in the CAISO EIM and when the EIM has not been suspended. The services provided under DSW–SD4 continue to apply and the costs are included in the applicable transmission service rates. For clarity, when DSW is participating in CAISO EIM, both DSW–SD4 and DSW–EIM1T shall apply.

Transmission customers will be billed for their share of EIM Administrative Service charges allocated to the WALC BA for its participation in the CAISO EIM in accordance with DSW's EIM business practice posted on its Open Access Same-time Information System (OASIS) at *www.oasis.oati.com/walc/index.html.* Revisions to the CAISO's Tariff may require changes to DSW's EIM business practice, which would be processed consistent with section 4.3 of WAPA's Tariff.

EIM Energy Imbalance Service

EI service is provided when a difference occurs between the scheduled and actual delivery of energy to a load within the WALC Balancing Authority Area (BAA). DSW's existing rate schedule for EI Service, DSW–EI4, does not address EIM participation or settlements.

The proposed new rate schedule, DSW–EIM4T, would facilitate the pass through of any financial settlements for EI Service from the CAISO EIM to DSW transmission customers and ensure the WALC BA remains revenue neutral. If placed into effect, this rate schedule will align with WAPA's Tariff and apply to EI Service when the WALC BA participates in the CAISO EIM and when the EIM has not been suspended. DSW–EI4 would apply when the WALC BA is not participating in EIM or when the EIM has been suspended.

Transmission customers will be billed for their share of EIM EI Service charges incurred by the WALC BA for its participation in the CAISO EIM in accordance with the settlement methods in DSW's EIM business practice posted on its OASIS at w*ww.oasis.oati.com/walc/index.html.* Revisions to the CAISO's Tariff may require changes to DSW's EIM business practice, which would be processed consistent with section 4.3 of WAPA's Tariff.

EIM Generator Imbalance Service

GI service is provided when a difference occurs between the output of a generator located in the WALC BAA, and the delivery schedule from that generator to (1) another BAA or (2) a load within the WALC BAA. DSW's existing rate schedule for GI service, DSW–GI2, does not address EIM participation or make a distinction between participating and non-participating resources. The EIM requires all participating resources to settle directly with the CAISO. Non-participating resources need to settle with the WALC BA, the EIM entity.

The proposed new rate schedule, DSW–EIM9T, would facilitate the pass through of any financial settlements for GI service from the CAISO EIM to DSW transmission customers and ensure the WALC BA remains revenue neutral. If placed into effect, this rate schedule will align with WAPA's Tariff and apply to GI service when the WALC BA participates in the CAISO EIM and when the EIM has not been suspended. DSW–G–I2 would apply when the WALC BA is not participating in EIM or when the EIM has been suspended.

Transmission customers will be billed for their share of EIM GI Service charges incurred by the WALC BA for its participation in the CAISO EIM in accordance with the settlement methods in DSW's EIM business practice posted on its OASIS at *www.oasis.oati.com/walc/index.html.* Revisions to the CAISO's Tariff may require changes to DSW's EIM business practice, which would be processed consistent with section 4.3 of WAPA's Tariff.

Legal Authority

Existing DOE procedures for public participation in power and transmission rate adjustments (10 CFR part 903) were published on September 18, 1985, and February 21, 2019.[2] The proposed action constitutes a minor rate adjustment, as defined by 10 CFR 903.2(e). In accordance with 10 CFR 903.15(a) and 10 CFR 903.16(a), DSW has determined it is not necessary to hold public information and public comment forums for this rate action but is initiating a 30-day consultation and comment period to give the public an opportunity to comment on the proposed formula rates. DSW will review and consider all timely public comments at the conclusion of the consultation and comment period and make amendments or adjustments to the proposal as appropriate.

WAPA is establishing the formula rates for DSW EIM Services in accordance with section 302 of the DOE Organization Act (42 U.S.C. 7152).[3]

By Delegation Order No. S1–DEL–RATES–2016, effective November 19, 2016, the Secretary of Energy delegated: (1) the authority to develop power and transmission rates to WAPA's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates, to FERC. By Delegation Order No. S1–DEL–S3–2022–2, effective June 13, 2022, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary for Infrastructure. By Redelegation Order No. S3–DEL–WAPA1–2022, effective June 13, 2022, the Under Secretary for Infrastructure further redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to WAPA's Administrator.

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents that DSW initiates or uses to develop the proposed formula rates are available on WAPA's website at

[2] 50 FR 37835 (Sept. 18, 1985) and 84 FR 5347 (Feb. 21, 2019).

[3] This Act transferred to, and vested in, the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts that specifically apply to the projects involved.

www.wapa.gov/regions/DSW/Pages/DSW–EIM.aspx.

Ratemaking Procedure Requirements

Environmental Compliance

WAPA is in the process of determining whether an environmental assessment or an environmental impact statement should be prepared, or if this action can be categorically excluded from those requirements.[4]

Determination Under Executive Order 12866

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Signing Authority

This document of the Department of Energy was signed on December 28, 2022, by Tracey A. LeBeau, Administrator, Western Area Power Administration, pursuant to delegated authority from the Secretary of Energy. That document, with the original signature and date, is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on January 4, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2023–00165 Filed 1–6–23; 8:45 am]

BILLING CODE 6450–01–P

[4] In compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321–4347; the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2016–0737; FRL–9945–02–OCSPP]

Trichloroethylene (TCE); Revision to the Toxic Substances Control Act (TSCA) Risk Determination; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of the final revision to the risk determination for the trichloroethylene (TCE) risk evaluation issued under the Toxic Substances Control Act (TSCA). The revision to the TCE risk determination reflects the announced policy changes to ensure the public is protected from unreasonable risks from chemicals in a way that is supported by science and the law. EPA determined that TCE, as a whole chemical substance, presents an unreasonable risk of injury to health when evaluated under its conditions of use. In addition, this revised risk determination does not reflect an assumption that workers always appropriately wear personal protective equipment (PPE). EPA understands that there could be adequate occupational safety protections in place at certain workplace locations; however, not assuming use of PPE reflects EPA's recognition that unreasonable risk may exist for subpopulations of workers that may be highly exposed because they are not covered by Occupational Safety and Health Administration (OSHA) standards, or their employers are out of compliance with OSHA standards, or because many of OSHA's chemical-specific permissible exposure limits largely adopted in the 1970's are described by OSHA as being ''outdated and inadequate for ensuring protection of worker health,'' or because EPA finds unreasonable risk for purposes of TSCA notwithstanding OSHA requirements. This revision supersedes the condition of use-specific no unreasonable risk determinations in the November 2020 TCE Risk Evaluation and withdraws the associated TSCA order included in the November 2020 TCE Risk Evaluation.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2016–0737, is available online at *https://www.regulations.gov* or in-person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Additional instructions on visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Katie McNamara, Office of Pollution Prevention and Toxics (7404M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–4361; email address: *mcnamara.katelan@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to those involved in the manufacture, processing, distribution, use, disposal, and/or the assessment of risks involving chemical substances and mixtures. You may be potentially affected by this action if you manufacture (defined under TSCA to include import), process (including recycling), distribute in commerce, use or dispose of TCE, including TCE in products. Since other entities may also be interested in this revision to the risk determination, EPA has not attempted to describe all the specific entities that may be affected by this action.

B. What is EPA's authority for taking this action?

TSCA section 6, 15 U.S.C. 2605, requires EPA to conduct risk evaluations to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation (PESS) identified as relevant to the risk evaluation by the Administrator, under the conditions of use. 15 U.S.C. 2605(b)(4)(A). TSCA sections 6(b)(4)(A) through (H) enumerate the deadlines and minimum requirements applicable to this process, including provisions that provide instruction on chemical substances that must undergo evaluation, the minimum components of a TSCA risk evaluation, and the timelines for public comment and completion of the risk evaluation. TSCA also requires that EPA operate in a manner that is consistent with the best available science, make decisions based on the weight of the scientific evidence, and consider reasonably available

information. 15 U.S.C. 2625(h), (i), and (k).

The statute identifies the minimum components for all chemical substance risk evaluations. For each risk evaluation, EPA must publish a document that outlines the scope of the risk evaluation to be conducted, which includes the hazards, exposures, conditions of use, and the potentially exposed or susceptible subpopulations that EPA expects to consider. 15 U.S.C. 2605(b)(4)(D). The statute further provides that each risk evaluation must also: (1) integrate and assess available information on hazards and exposures for the conditions of use of the chemical substance, including information that is relevant to specific risks of injury to health or the environment and information on relevant potentially exposed or susceptible subpopulations; (2) describe whether aggregate or sentinel exposures were considered and the basis for that consideration; (3) take into account, where relevant, the likely duration, intensity, frequency, and number of exposures under the conditions of use; and (4) describe the weight of the scientific evidence for the identified hazards and exposures. 15 U.S.C. 2605(b)(4)(F)(i) through (ii) and (iv) through (v). Each risk evaluation must not consider costs or other nonrisk factors. 15 U.S.C. 2605(b)(4)(F)(iii).

EPA has inherent authority to reconsider previous decisions and to revise, replace, or repeal a decision to the extent permitted by law and supported by reasoned explanation. *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009); *see also Motor Vehicle Mfrs. Ass'n* v. *State Farm Mutual Auto. Ins. Co.,* 463 U.S. 29, 42 (1983). Pursuant to such authority, EPA has reconsidered and is now finalizing a revised risk determination for TCE.

C. What action is EPA taking?

EPA is announcing the availability of the final revision to the risk determination for the TCE risk evaluation issued under TSCA that published in November 2020 (Ref. 1). In July 2022, EPA sought public comment on the draft revisions (87 FR 40520, July 7, 2022). EPA appreciates the public comments received on the draft revision to the TCE risk determination. After review of these comments and consideration of the specific circumstances of TCE, EPA concludes that the Agency's risk determination for TCE is better characterized as a whole chemical risk determination rather than condition-of-use-specific risk determinations. Accordingly, EPA is revising and replacing Section 5 of the November 2020 TCE Risk Evaluation (Ref. 2) where the findings of unreasonable risk to health were previously made for the individual conditions of use evaluated. EPA is also withdrawing the previously issued TSCA section 6(i)(l) order for two conditions of use previously determined not to present unreasonable risk which was included in Section 5.4.1 of the November 2020 TCE Risk Evaluation (Ref. 2).

This final revision to the TCE risk determination is consistent with EPA's plans to revise specific aspects of the first ten TSCA chemical risk evaluations to ensure that the risk evaluations better align with TSCA's objective of protecting health and the environment. As a result of this revision, removing the assumption that workers always and appropriately wear PPE (see Unit II.C.) does not alter the conditions of use that drive the unreasonable risk determination for TCE, though additional risks for acute non-cancer and cancer effects from inhalation and dermal exposures also drive the unreasonable risk in many of those conditions of use (where previously those conditions of use were identified as presenting unreasonable risk only for chronic non-cancer effects and cancer). However, EPA is not making condition-of-use-specific risk determinations for those conditions of use, and for purposes of TSCA section 6(i), EPA is not issuing a final order under TSCA section 6(i)(1) for the conditions of use that do not drive the unreasonable risk, and does not consider the revised risk determination to constitute a final agency action at this point in time. Overall, 52 conditions of use out of 54 EPA evaluated drive the TCE whole chemical unreasonable risk determination due to risks identified for human health. The full list of the conditions of use evaluated for the TCE TSCA risk evaluation is in Tables 4–59 and 4–60 of the November 2020 TCE Risk Evaluation (Ref. 2).

II. Background

A. Why is EPA re-issuing the risk determination for the TCE risk evaluation conducted under TSCA?

In accordance with Executive Order 13990 (''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis'') and other Administration priorities (Refs. 3, 4, 5, and 6), EPA reviewed the risk evaluations for the first ten chemical substances, including TCE, to ensure that they meet the requirements of TSCA, including conducting decision-making in a manner that is consistent with the best available science.

As a result of this review, EPA announced plans to revise specific aspects of the first ten risk evaluations in order to ensure that the risk evaluations appropriately identify unreasonable risks and thereby help ensure the protection of human health and the environment (Ref. 7). Following a review of specific aspects of the November 2020 TCE Risk Evaluation (Ref. 2) and after considering comments received on a draft revised risk determination for TCE, EPA has determined that making an unreasonable risk determination for TCE as a whole chemical substance, rather than making unreasonable risk determinations separately on each individual condition of use evaluated in the risk evaluation, is the most appropriate approach for TCE under the statute and implementing regulations. In addition, EPA's final risk determination is explicit insofar as it does not rely on assumptions regarding the use of PPE in making the unreasonable risk determination under TSCA section 6, even though some facilities might be using PPE as one means to reduce worker exposures; rather, the use of PPE as a means of addressing unreasonable risk will be considered during risk management, as appropriate.

Separately, EPA is conducting a screening approach to assess risks from the air and water pathways for several of the first 10 chemicals, including this chemical. For TCE the exposure pathways that were or could be regulated under another EPA-administered statute were excluded from the final risk evaluation (see section 1.4.2 of the November 2020 TCE Risk Evaluation). This resulted in the ambient air and ambient water pathways for TCE not being assessed. The goal of the recently-developed screening approach is to remedy this exclusion and to determine if there may be risks that were unaccounted for in the TCE risk evaluation. The screening-level approach has gone through public comment and independent external peer review through the SACC. The Agency received the final peer review report on May 18, 2022, and has reviewed public comments and SACC comments. EPA expects to describe its findings regarding the chemical-specific application of this screening-level approach in the forthcoming proposed rule under TSCA section 6(a) for TCE.

This action pertains only to the risk determination for TCE. While EPA intends to consider and may take additional similar actions on other of the first ten chemicals, EPA is taking a chemical-specific approach to reviewing these risk evaluations and is

incorporating new policy direction in a surgical manner, while being mindful of Congressional direction on the need to complete risk evaluations and move toward any associated risk management activities in accordance with statutory deadlines.

B. What is a whole chemical view of the unreasonable risk determination for the TCE risk evaluation?

TSCA section 6 repeatedly refers to determining whether a chemical *substance* presents unreasonable risk under its conditions of use. Stakeholders have disagreed over whether a chemical substance should receive: A single determination that is comprehensive for the chemical substance after considering the conditions of use, referred to as a whole-chemical determination; or multiple determinations, each of which is specific to a condition of use, referred to as condition-of-use-specific determinations.

As explained in the **Federal Register** document announcing the availability of the draft revised risk determination for TCE (87 FR 40522, July 7, 2022 (FRL–9945–01–OCSPP)), the proposed Risk Evaluation Procedural Rule (Ref. 8) was premised on the whole chemical approach to making unreasonable risk determinations. In that proposed rule, EPA acknowledged a lack of specificity in statutory text that might lead to different views about whether the statute compelled EPA's risk evaluations to address all conditions of use of a chemical substance or whether EPA had discretion to evaluate some subset of conditions of use (*i.e.,* to scope out some manufacturing, processing, distribution in commerce, use, or disposal activities), but also stated that ''EPA believes the word 'the' [in TSCA section 6(b)(4)(A)] is best interpreted as calling for evaluation that considers all conditions of use.'' The proposed rule, however, was unambiguous on the point that unreasonable risk determinations would be for the chemical substance as a whole, even if based on a subset of uses. See Ref. 8 at pages 7565–66 (''TSCA section 6(b)(4)(A) specifies that a risk evaluation must determine whether 'a chemical substance' presents an unreasonable risk of injury to health or the environment 'under the conditions of use.' The evaluation is on the chemical substance—not individual conditions of use—and it must be based on 'the conditions of use.' In this context, EPA believes the word 'the' is best interpreted as calling for evaluation that considers all conditions of use.''). In the proposed regulatory text, EPA proposed to determine whether the chemical substance presents an unreasonable risk of injury to health or the environment under the conditions of use. (Ref. 8 at 7480.)

The final Risk Evaluation Procedural Rule stated (82 FR 33726, July 20, 2017 (FRL–9964–38)) (Ref. 9): ''As part of the risk evaluation, EPA will determine whether the chemical substance presents an unreasonable risk of injury to health or the environment under each condition of uses [sic] within the scope of the risk evaluation, either in a single decision document or in multiple decision documents'' (40 CFR 702.47). For the unreasonable risk determinations in the first ten risk evaluations, EPA applied this provision by making individual risk determinations for each condition of use evaluated as part of each risk evaluation document (*i.e.,* the condition-of-use-specific approach to risk determinations). That approach was based on one particular passage in the preamble to the final Risk Evaluation Rule which stated that EPA will make individual risk determinations for all conditions of use identified in the scope. (Ref. 9 at 33744).

In contrast to this portion of the preamble of the final Risk Evaluation Rule, the regulatory text itself and other statements in the preamble reference a risk determination *for the chemical substance* under its conditions of use, rather than separate risk determinations for each of the conditions of use of a chemical substance. In the key regulatory provision excerpted previously from 40 CFR 702.47, the text explains that ''[a]s part of the risk evaluation, EPA will determine whether *the chemical substance* presents an unreasonable risk of injury to health or the environment under each condition of uses [sic] within the scope of the risk evaluation, either in a single decision document or in multiple decision documents'' (Ref. 9, emphasis added). Other language reiterates this perspective. For example, 40 CFR 702.31(a) states that the purpose of the rule is to establish the EPA process for conducting a risk evaluation to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment as required under TSCA section 6(b)(4)(B). Likewise, there are recurring references to whether the chemical substance presents an unreasonable risk in 40 CFR 702.41(a). See, for example, 40 CFR 702.41(a)(6), which explains that the extent to which EPA will refine its evaluations for one or more condition of use in any risk evaluation will vary as necessary to determine whether a chemical substance presents an unreasonable risk. Notwithstanding the one preambular statement about condition-of-use-specific risk determinations, the preamble to the final rule also contains support for a risk determination on the chemical substance as a whole. In discussing the identification of the conditions of use of a chemical substance, the preamble notes that this task inevitably involves the exercise of discretion on EPA's part, and ''as EPA interprets the statute, the Agency is to exercise that discretion consistent with the objective of conducting a technically sound, manageable evaluation to determine whether a chemical substance—not just individual uses or activities—presents an unreasonable risk'' (Ref. 9 at 33729).

Therefore, notwithstanding EPA's choice to issue condition-of-use-specific risk determinations to date, EPA interprets its risk evaluation regulation to also allow the Agency to issue whole-chemical risk determinations. Either approach is permissible under the regulation. A panel of the Ninth Circuit Court of Appeals also recognized the ambiguity of the regulation on this point. *Safer Chemicals* v. *EPA,* 943 F.3d. 397, 413 (9th Cir. 2019) (holding a challenge about ''use-by-use risk evaluations [was] not justiciable because it is not clear, due to the ambiguous text of the Risk Evaluation Rule, whether the Agency will actually conduct risk evaluations in the manner Petitioners fear'').

EPA plans to consider the appropriate approach for each chemical substance risk evaluation on a case-by-case basis, taking into account considerations relevant to the specific chemical substance in light of the Agency's obligations under TSCA. The Agency expects that this case-by-case approach will provide greater flexibility in the Agency's ability to evaluate and manage unreasonable risk from individual chemical substances. EPA believes this is a reasonable approach under TSCA and the Agency's implementing regulations.

With regard to the specific circumstances of TCE, EPA has determined that a whole chemical approach is appropriate for TCE in order to protect health and the environment. The whole chemical approach is appropriate for TCE because there are benchmark exceedances for a substantial number of conditions of use (spanning across most aspects of the chemical lifecycle—from manufacturing (including import), processing, industrial and commercial use, consumer use, and disposal) for workers, occupational non-users, consumers, and bystanders associated

with TCE exposures. Because these chemical-specific properties cut across the conditions of use within the scope of the risk evaluation, a substantial amount of the conditions of use drive the unreasonable risk; therefore, it is appropriate for the Agency to make a determination for TCE that the whole chemical presents an unreasonable risk.

As explained later in this document, the revisions to the unreasonable risk determination (Section 5 of the November 2020 TCE Risk Evaluation (Ref. 2)) follow the issuance of a draft revision to the TSCA TCE unreasonable risk determination (87 FR 40520, July 07, 2022) and the receipt of public comment. A response to comments document is also being issued with the final revised unreasonable risk determination for TCE (Ref. 10). The revisions to the unreasonable risk determination are based on the existing risk characterization section of the November 2020 TCE Risk Evaluation (Ref. 2) (Section 4) and do not involve additional technical or scientific analysis. The discussion of the issues in this **Federal Register** document and in the accompanying final revised risk determination for TCE supersede any conflicting statements in the November 2020 TCE Risk Evaluation (Ref. 2) and the earlier response to comments document (Ref. 11). EPA views the peer reviewed hazard and exposure assessments and associated risk characterization as robust and upholding the standards of best available science and weight of the scientific evidence per TSCA sections 26(h) and (i).

For purposes of TSCA section 6(i), EPA is making a risk determination on TCE as a whole chemical. Under the revised approach, the ''whole chemical'' risk determination for TCE supersedes the no unreasonable risk determinations for TCE that were premised on a condition-of-use-specific approach to determining unreasonable risk and also contains an order withdrawing the TSCA section 6(i)(1) order in Section 5.4.1 of the November 2020 TCE Risk Evaluation (Ref. 2).

C. What revision is EPA now making final about the use of PPE for the TCE risk evaluation?

In the risk evaluations for the first ten chemical substances, as part of the unreasonable risk determination, EPA assumed for several conditions of use that workers were provided and always used PPE in a manner that achieves the stated assigned protection factor (APF) for respiratory protection, or used impervious gloves for dermal protection. In support of this assumption, EPA used reasonably available information such as public comments indicating that some employers, particularly in the industrial setting, provide PPE to their employees and follow established worker protection standards (*e.g.,* OSHA requirements for protection of workers).

For the November 2020 TCE Risk Evaluation (Ref. 2), EPA assumed that workers used PPE for 21 occupational conditions of use. In the November 2020 TCE risk evaluation, EPA determined that there is unreasonable risk to workers for all these conditions of use even with this assumed PPE use.

EPA is revising the assumption for TCE that workers always and properly use PPE. However, this does not mean that EPA questions the veracity of public comments which describe occupational safety practices often followed by industry. EPA believes it is appropriate when conducting risk evaluations under TSCA to evaluate the levels of risk present in baseline scenarios where PPE is not assumed to be used by workers. This approach of not assuming PPE use by workers considers the risk to potentially exposed or susceptible subpopulations of workers who may not be covered by OSHA standards, such as self-employed individuals and public sector workers who are not covered by a State Plan. It should be noted that, in some cases, baseline conditions may reflect certain mitigation measures, such as engineering controls, in instances where exposure estimates are based on monitoring data at facilities that have engineering controls in place.

In addition, EPA believes it is appropriate to evaluate the levels of risk present in scenarios considering applicable OSHA requirements (*e.g.,* chemical-specific permissible exposure limits (PELs) and/or chemical-specific PELs with additional substance-specific standards), as well as scenarios considering industry or sector best practices for industrial hygiene that are clearly articulated to the Agency. Consistent with this approach, the November 2020 TCE Risk Evaluation (Ref. 2) characterized risk to workers both with and without the use of PPE. By characterizing risks using scenarios that reflect different levels of mitigation, EPA risk evaluations can help inform potential risk management actions by providing information that could be used during risk management to tailor risk mitigation appropriately to address any unreasonable risk identified, or to ensure that applicable OSHA requirements or industry or sector best practices that address the unreasonable risk are required for all potentially exposed and susceptible subpopulations (including self-employed individuals and public sector workers who are not covered by an OSHA State Plan).

When undertaking unreasonable risk determinations as part of TSCA risk evaluations, however, EPA does not believe it is appropriate to assume as a general matter that an applicable OSHA requirement or industry practice related to PPE use is consistently and always properly applied. Mitigation scenarios included in the EPA risk evaluation (*e.g.,* scenarios considering use of various PPE) likely represent what is happening already in some facilities. However, the Agency cannot assume that all facilities have adopted these practices for the purposes of making the TSCA risk determination (Ref. 12).

Therefore, EPA is making a determination of unreasonable risk for TCE from a baseline scenario that does not assume compliance with OSHA standards, including any applicable exposure limits or requirements for use of respiratory protection or other PPE. Making unreasonable risk determinations based on the baseline scenario should not be viewed as an indication that EPA believes there are no occupational safety protections in place at any location, or that there is widespread non-compliance with applicable OSHA standards. Rather, it reflects EPA's recognition that unreasonable risk may exist for subpopulations of workers that may be highly exposed because they are not covered by OSHA standards, such as self-employed individuals and public sector workers who are not covered by a State Plan, or because their employer is out of compliance with OSHA standards, or because many of OSHA's chemical-specific permissible exposure limits largely adopted in the 1970's are described by OSHA as being ''outdated and inadequate for ensuring protection of worker health,'' (Ref. 13), or because the OSHA PEL alone may be inadequate to protect human health, or because EPA finds unreasonable risk for purposes of TSCA notwithstanding OSHA requirements.

In accordance with this approach, EPA is finalizing the revision to the TCE risk determination without relying on assumptions regarding the occupational use of PPE in making the unreasonable risk determination under TSCA section 6; rather, information on the use of PPE as a means of mitigating risk (including public comments received from industry respondents about occupational safety practices in use) will be considered during the risk management phase, as appropriate. This represents a change from the approach

taken in the November 2020 TCE Risk Evaluation (Ref. 2). As a general matter, when undertaking risk management actions, EPA intends to strive for consistency with applicable OSHA requirements and industry best practices, including appropriate application of the hierarchy of controls, to the extent that applying those measures would address the identified unreasonable risk, including unreasonable risk to potentially exposed or susceptible subpopulations. Consistent with TSCA section 9(d), EPA will consult and coordinate TSCA activities with OSHA and other relevant Federal agencies for the purpose of achieving the maximum applicability of TSCA while avoiding the imposition of duplicative requirements. Informed by the mitigation scenarios and information gathered during the risk evaluation and risk management process, the Agency might propose rules that require risk management practices that may be already common practice in many or most facilities. Adopting clear, comprehensive regulatory standards will foster compliance across all facilities (ensuring a level playing field) and assure protections for all affected workers, especially in cases where current OSHA standards may not apply or be sufficient to address the unreasonable risk.

Removing the assumption that workers always and appropriately wear PPE in making the whole chemical risk determination for TCE does not result in additional conditions of use to the original 52 conditions of use that drive the unreasonable risk, though EPA identifies additional risks for acute non-cancer and cancer effects from inhalation and dermal exposures as driving the unreasonable risk within many of those conditions of use (where previously those conditions of use were identified as presenting unreasonable risk only for chronic non-cancer effects and cancer due to assumed use of PPE). The finalized revision to the TCE risk determination clarifies that EPA does not rely on the assumed use of PPE when making the risk determination for the whole substance; rather, the use of PPE as a means of addressing unreasonable risk will be considered during risk management, as appropriate.

D. What is TCE?

TCE is a colorless liquid with a pleasant, sweet odor resembling that of chloroform. It is considered a volatile organic compound and has a wide range of uses in consumer and commercial products and in industry. An estimated 84% of TCE's annual production volume is used as an intermediate in the manufacture of the hydrofluorocarbon, HFC–134a, an alternative to the refrigerant chlorofluorocarbon, CFC–12. Another 15% of TCE production volume is used as a degreasing solvent, leaving approximately 1% for other uses. The total aggregate production volume decreased from 220.5 to 171.9 million pounds between 2012 and 2015.

E. What conclusions is EPA finalizing today in the revised TSCA risk evaluation based on the whole chemical approach and not assuming the use of PPE?

EPA determined that TCE presents an unreasonable risk to health under the conditions of use. EPA's unreasonable risk determination for TCE as a chemical substance is driven by risks associated with the following conditions of use, considered singularly or in combination with other exposures:

- Manufacturing: domestic manufacture;
- Manufacturing: import;
- Processing: processing as a reactant/intermediate;
- Processing: incorporation into a formulation, mixture or reaction product;
- Processing: incorporation into articles;
- Processing: repackaging;
- Processing: recycling;
- Industrial and commercial use as a solvent for open-top batch vapor degreasing;
- Industrial and commercial use as a solvent for closed-loop batch vapor degreasing;
- Industrial and commercial use as a solvent for in-line conveyorized vapor degreasing;
- Industrial and commercial use as a solvent for in-line web cleaner vapor degreasing;
- Industrial and commercial use as a solvent for cold cleaning;
- Industrial and commercial use as a solvent for aerosol spray degreaser/cleaner and mold release;
- Industrial and commercial use as a lubricant and grease in tap and die fluid;
- Industrial and commercial use as a lubricant and grease in penetrating lubricant;
- Industrial and commercial use as an adhesive and sealant in solvent-based adhesives and sealants; tire repair cement/sealer; mirror edge sealant;
- Industrial and commercial use as a functional fluid in heat exchange fluid;
- Industrial and commercial use in paints and coatings as a diluent in solvent-based paints and coatings;
- Industrial and commercial use in cleaning and furniture care products in carpet cleaner and wipe cleaning;
- Industrial and commercial use in laundry and dishwashing products in spot remover;
- Industrial and commercial use in arts, crafts, and hobby materials in fixatives and finishing spray coatings;
- Industrial and commercial use in corrosion inhibitors and anti-scaling agents;
- Industrial and commercial use in processing aids in process solvent used in battery manufacture; process solvent used in polymer fabric spinning, fluoroelastomer manufacture and Alcantara manufacture; extraction solvent used in caprolactam manufacture; precipitant used in beta-cyclodextrin manufacture;
- Industrial and commercial use as ink, toner and colorant products in toner aid;
- Industrial and commercial use in automotive care products in brake and parts cleaner;
- Industrial and commercial use in apparel and footwear care products in shoe polish;
- Industrial and commercial use in hoof polish; gun scrubber; pepper spray; other miscellaneous industrial and commercial uses;
- Consumer use as a solvent in brake and parts cleaner;
- Consumer use as a solvent in aerosol electronic degreaser/cleaner;
- Consumer use as a solvent in liquid electronic degreaser/cleaner;
- Consumer use as a solvent in aerosol spray degreaser/cleaner;
- Consumer use as a solvent in liquid degreaser/cleaner;
- Consumer use as a solvent in aerosol gun scrubber;
- Consumer use as a solvent in liquid gun scrubber;
- Consumer use as a solvent in mold release;
- Consumer use as a solvent in aerosol tire cleaner;
- Consumer use as a solvent in liquid tire cleaner;
- Consumer use as a lubricant and grease in tap and die fluid;
- Consumer use as a lubricant and grease in penetrating lubricant;
- Consumer use as an adhesive and sealant in solvent-based adhesives and sealants;
- Consumer use as an adhesive and sealant in mirror edge sealant;
- Consumer use as an adhesive and sealant in tire repair cement/sealer;
- Consumer use as a cleaning and furniture care product in carpet cleaner;
- Consumer use as a cleaning and furniture care product in aerosol spot remover;
- Consumer use as a cleaning and furniture case product in liquid spot remover;

- Consumer use in arts, crafts, and hobby materials in fixative and finishing spray coatings;
- Consumer use in apparel and footwear products in shoe polish;
- Consumer use in fabric spray;
- Consumer use in film cleaner;
- Consumer use in hoof polish;
- Consumer use in toner aid; and
- Disposal.

The following conditions of use do not drive EPA's unreasonable risk determination for TCE:

- Consumer use in pepper spray; and
- Distribution in commerce.

EPA is not making condition of use-specific risk determinations for these conditions of use, is not issuing a final order under TSCA section 6(i)(1) for the conditions of use that do not drive the unreasonable risk and does not consider the revised risk determination for TCE to constitute a final agency action at this point in time.

Consistent with the statutory requirements of TSCA section 6(a), EPA will propose a risk management regulatory action to the extent necessary so that TCE no longer presents an unreasonable risk. EPA expects to focus its risk management action on the conditions of use that drive the unreasonable risk. However, it should be noted that, under TSCA section 6(a), EPA is not limited to regulating the specific activities found to drive unreasonable risk and may select from among a suite of risk management requirements in section 6(a) related to manufacture (including import), processing, distribution in commerce, commercial use, and disposal as part of its regulatory options to address the unreasonable risk. As a general example, EPA may regulate upstream activities (*e.g.,* processing, distribution in commerce) to address downstream activities (*e.g.,* consumer uses) driving unreasonable risk, even if the upstream activities do not drive the unreasonable risk.

III. Summary of Public Comments

EPA received a total of 15 public comments on the July 7, 2022, draft revised risk determination for TCE during the comment period that ended August 8, 2022. Commenters included trade organizations, industry stakeholders, environmental groups, and non-governmental health advocacy organizations. A separate document that summarizes all comments submitted and EPA's responses to those comments has been prepared and is available in the docket for this notice (Ref. 10).

IV. Revision of the November 2020 TCE Risk Evaluation

A. Why is EPA revising the risk determination for the TCE risk evaluation?

EPA is finalizing the revised risk determination for the TCE risk evaluation pursuant to TSCA section 6(b) and consistent with Executive Order 13990, (''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis'') and other Administration priorities (Refs. 3, 4, 5, and 6). EPA is revising specific aspects of the first ten TSCA existing chemical risk evaluations in order to ensure that the risk evaluations better align with TSCA's objective of protecting health and the environment. For the TCE risk evaluation, this includes: (1) Making the risk determination in this instance based on the whole chemical substance instead of by individual conditions of use and (2) Emphasizing that EPA does not rely on the assumed use of PPE when making the risk determination.

B. What are the revisions?

EPA is now finalizing the revised risk determination for the November 2020 TCE Risk Evaluation (Ref. 2) pursuant to TSCA section 6(b). Under the revised determination (Ref. 1), EPA concludes that TCE, as evaluated in the risk evaluation as a whole, presents an unreasonable risk of injury to health when evaluated under its conditions of use. This revision replaces the previous unreasonable risk determinations made for TCE by individual conditions of use, supersedes the determinations (and withdraws the associated order) of no unreasonable risk for the conditions of use identified in the TSCA section 6(i)(1) no unreasonable risk order, and clarifies the lack of reliance on assumed use of PPE as part of the risk determination.

These revisions do not alter any of the underlying technical or scientific information that informs the risk characterization, and as such the hazard, exposure, and risk characterization sections are not changed, except to statements about PPE assumptions in Section 2.3.1.2.5 (Dermal Exposure Modeling) and Section 4.2.2 (Risk Estimation for Occupational Exposures), Table 4–9 (Inhalation Exposure Data Summary and PPE Use Determination). The discussion of the issues in this *Notice* and in the accompanying final revision to the risk determination supersede any conflicting statements in the prior executive summary, and Section 2.3.1.2.5 and Section 4.2.2 (Table 4–9) from the November 2020 TCE Risk Evaluation (Ref. 2) and the response to comments document (Ref. 11).

The revised unreasonable risk determination for TCE includes additional explanation of how the risk evaluation characterizes the applicable OSHA requirements, or industry or sector best practices, and also clarifies that no additional analysis was done, and the risk determination is based on the risk characterization (Section 4) of the November 2020 TCE Risk Evaluation (Ref. 2).

C. Will the revised risk determination be peer reviewed?

The risk determination (Section 5 of the November 2020 TCE Risk Evaluation (Ref. 2)) was not part of the scope of the Science Advisory Committee on Chemicals (SACC) peer review of the TCE risk evaluation. Thus, consistent with that approach, EPA did not conduct peer review of the final revised unreasonable risk determination for the TCE risk evaluation because no technical or scientific changes were made to the hazard or exposure assessments or the risk characterization.

V. Order Withdrawing Previous Order Regarding Unreasonable Risk Determinations for Certain Conditions of Use

EPA is also issuing a new order to withdraw the TSCA Section 6(i)(1) no unreasonable risk order issued in Section 5.4.1 of the November 2020 TCE Risk Evaluation (Ref. 2). This final revised risk determination supersedes the condition of use-specific no unreasonable risk determinations in the November 2020 TCE Risk Evaluation (Ref. 2). The order contained in Section 5.5 of the revised risk determination (Ref. 1) withdraws the TSCA section 6(i)(1) order contained in Section 5.4.1 of the November 2020 TCE Risk Evaluation (Ref. 2). Consistent with the statutory requirements of section 6(a), the Agency will propose risk management action to address the unreasonable risk determined in the TCE risk evaluation.

VI. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult

the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Unreasonable Risk Determination for Trichloroethylene (TCE). December 2022.
2. EPA. Risk Evaluation for Trichloroethylene. November 2020. EPA Document #740–R–18–008. *https://www.regulations.gov/document/EPA-HQ-OPPT-2019-0500-0113.*
3. Executive Order 13990. Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis. **Federal Register**. 86 FR 7037, January 25, 2021.
4. Executive Order 13985. Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. **Federal Register**. 86 FR 7009, January 25, 2021.
5. Executive Order 14008. Tackling the Climate Crisis at Home and Abroad. **Federal Register**. 86 FR 7619, February 1, 2021.
6. Presidential Memorandum. Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking. **Federal Register**. 86 FR 8845, February 10, 2021.
7. EPA. Press Release; EPA Announces Path Forward for TSCA Chemical Risk Evaluations. June 2021. *https://www.epa.gov/newsreleases/epa-announces-path-forward-tsca-chemical-risk-evaluations.*
8. EPA. Proposed Rule; Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act. **Federal Register**. 82 FR 7562, January 19, 2017 (FRL–9957–75).
9. EPA. Final Rule; Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act. **Federal Register**. 82 FR 33726, July 20, 2017 (FRL–9964–38).
10. EPA. Response to Public Comments to the Revised Unreasonable Risk Determination; Trichloroethylene (TCE). December 2022.
11. EPA. Summary of External Peer Review and Public Comments and Disposition for Trichloroethylene (TCE). November 2020. Available at: *https://www.regulations.gov/document/EPA-HQ-OPPT-2019-0500-0114.*
12. Occupational Safety and Health Administration (OSHA). Top 10 Most Frequently Cited Standards for Fiscal Year 2021 (October 1, 2020, to September 30, 2021). Accessed October 13, 2022. *https://www.osha.gov/top10citedstandards.*
13. OSHA. Permissible Exposure Limits—Annotated Tables. Accessed June 13, 2022. *https://www.osha.gov/annotated-pels.*

Authority: 15 U.S.C. 2601 *et seq.*

Dated: January 3, 2023.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2023–00116 Filed 1–6–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

[Notice 2023–01]

Notice of Public Hearing and Request for Public Comments

AGENCY: Federal Election Commission.

ACTION: Notice of public hearing and request for public comments.

SUMMARY: The Federal Election Commission seeks public comment on its policies and procedures regarding the auditing of political committees that do not receive public funds. The Commission also is announcing a public hearing on its audit procedures.

DATES: Comments must be submitted on or before February 8, 2023. A hybrid public hearing will be held on a later date at the Federal Election Commission, 1050 First St. NE, 12th floor Hearing Room, Washington, DC 20463, and virtually. The Commission will publish a notification of hearing in the **Federal Register** announcing the date and time of the hearing. Anyone seeking to testify at the hearing must file written comments by the due date and must include in the written comments a request to testify.

ADDRESSES: All comments must be in writing. Commenters may submit comments by email to *audit2023@fec.gov.*

Each commenter must provide, at a minimum, his or her first name, last name, city, and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's website and in the Commission's Public Records Office. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, date of birth, phone number, social security number, or driver's license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, or Ms. Joanna S. Waldstreicher, Attorney, Office of the General Counsel, at *audit2023@fec.gov* or 202–694–1650.

SUPPLEMENTARY INFORMATION: The Commission administers the Federal Election Campaign Act,[1] in relevant part, through a review of disclosure reports that are filed with the Commission. When the Commission's review of a non-publicly-funded political committee's disclosure reports indicates that the reports appear not to have met the threshold requirements for substantial compliance with the requirements of the Act, the Commission may conduct an audit of the committee to determine whether the committee complied with the Act's limitations, prohibitions and disclosure requirements.[2] The Commission's procedures regarding these audits are primarily set forth in Directive 70: FEC Directive on Processing Audit Reports;[3] Procedural Rules for Audit Hearings;[4] and a program for requesting consideration of legal questions by the Commission.[5]

In the course of addressing its administrative responsibilities, the Commission periodically reviews its programs to ensure that it is fulfilling its mission of enforcing and administering the Act while continuing to afford due process and efficiency to political committees. The purpose of this Notice is to reexamine the Commission's policies and procedures regarding the auditing of political committees that do not receive public funds, and to give the regulated community and representatives of the public an opportunity to bring before the Commission comments and concerns about its audit process. The Commission will use the comments received to help determine whether internal directives or practices should be adjusted, and if so, how. The Commission is not, in this notice, seeking comment on its policies, practices, and procedures regarding audits of publicly funded committees.

The Commission seeks comments addressing the audit process since the most recent changes were made over ten years ago: for example, the Rules for Audit Hearings in 2009, Directives 69 and 70 in 2010, and the Program for Requesting Consideration of Legal Questions in 2011. For example, are committees being given sufficient

[1] 52 U.S.C. 30101–45.

[2] 52 U.S.C. 30111(b). The Commission is required by law to audit presidential committees that receive public funds. 52 U.S.C. 30111(b); 26 U.S.C. 9007(a), 9038(a).

[3] *https://www.fec.gov/resources/cms-content/documents/directive_70.pdf* (adopted in 2010 and last modified in 2011).

[4] 74 FR 33,140 (July 10, 2009) and Correction, 74 FR 39,535 (August 7, 2009).

[5] Policy Statement Regarding a Program for Requesting Consideration of Legal Questions by the Commission, 84 FR 36,602 (July 29, 2019) (updating Commission's contact information, recounting history of similar changes to program since adopted in 2011, and publishing current policy in full); Directive 69: FEC Directive on Legal Guidance to the Office of Compliance, *https://www.fec.gov/resources/cms-content/documents/directive_69.pdf* (adopted in 2010).

opportunity to be heard by the Commission during the audit process? Has the audit process become more complex, costly, or inefficient? What can the Commission do to improve the audit process?

The Commission welcomes comments on how it might increase fairness, substantive and procedural due process, efficiency, and effectiveness of the Commission's auditing of political committees, and how the audit function could best serve the Commission's mission and enhance disclosure and compliance with the Act. The Commission is particularly interested in hearing from committees that have directly interacted with the Commission in the audit process, and their counsel, on how the Commission's audit policies and procedures have facilitated or hindered committees' productive interaction with the agency and substantial compliance with the Act.

On behalf of the Commission.

Dara S. Lindenbaum,

Chair, Federal Election Commission.

[FR Doc. 2023–00128 Filed 1–6–23; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Thursday, January 12, 2023 at 10:30 a.m.

PLACE: Hybrid meeting: 1050 First Street NE, Washington, DC (12th Floor) and virtual.

Note: For those attending the meeting in person, current COVID–19 safety protocols for visitors, which are based on the CDC COVID–19 community level in Washington, DC, will be updated on the commission's contact page by the Monday before the meeting. See the contact page at *https://www.fec.gov/contact/*. If you would like to virtually access the meeting, see the instructions below.

STATUS: This meeting will be open to the public, subject to the above-referenced guidance regarding the COVID–19 community level and corresponding health and safety procedures. To access the meeting virtually, go to the commission's website *www.fec.gov* and click on the banner to be taken to the meeting page.

MATTERS TO BE CONSIDERED:

Audit Division Recommendation Memorandum on the Jim Risch for U.S. Senate Committee (A21–06)

Audit Division Recommendation Memorandum on Sheila Jackson Lee for Congress (A21–05)

Draft Advisory Opinion 2022–25: Senator Mike Crapo/Mike Crapo for U.S. Senate

Management and Administrative Matters

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer. Telephone: (202) 694–1220.

Individuals who plan to attend in person and who require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Laura E. Sinram, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Laura E. Sinram,

Secretary and Clerk of the Commission.

[FR Doc. 2023–00286 Filed 1–5–23; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Training Evaluation

AGENCY: Federal Mediation and Conciliation Service (FMCS).

ACTION: 30-Day notice and request for comments.

SUMMARY: FMCS requests evaluations from clients to create tailored training as well as post-training evaluations to continue to provide world-class training to all sectors.

DATES: Comments must be submitted on or before February 8, 2023.

ADDRESSES: You may submit comments, identified by Training Evaluation, through one of the following methods:

- *Email: register@fmcs.gov;*
- *Mail:* Office of the General Counsel, One Independence Square, 250 E. Street SW, Washington, DC 20427. Please note that at this time, mail is sometimes delayed. Therefore, we encourage emailed comments.

FOR FURTHER INFORMATION CONTACT: Krystil Smith, *ksmith@fmcs.gov,* 202–606–5137.

SUPPLEMENTARY INFORMATION: Copies of the agency questions are available here.

I. Information Collection Request

Agency: Federal Mediation and Conciliation Service.

Form Number: Not yet assigned.

Type of Request: New collection.

Affected Entities: Federal Government, households and individuals, private sector (private sector, not-for-profit institutions), State and local governments.

Frequency: All affected entities are requested to complete the information collection on occasion. The information collection takes approximately 2 minutes to complete.

Abstract: FMCS provides training services to minimize workplace conflict. To continue to provide the best training, FMCS needs to solicit feedback on its training services.

Burden: We expect to solicit 1,500 information collections annually, with an estimated 2 minutes for completion. We expect a response rate of 35%. The respondent is asked to respond on occasion (before or after the training). Therefore, the estimated burden is 1,050 minutes.

II. Request for Comments

FMCS solicits comments to:

i. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

ii. Enhance the accuracy of the agency's estimates of the burden of the proposed collection of information.

iii. Enhance the quality, utility, and clarity of the information to be collected.

iv. Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic collection technologies or other forms of information technology.

III. 60-Day Comment Period

This information was previously published in the **Federal Register** on October 20, 2022, allowing for a 60-day public comment period under Document 2022–22729 at 87 FR 63776. FMCS received no comments.

IV. The Official Record

The official records are both electronic and paper records.

List of Subjects

Labor-Management Relations.

Dated: January 4, 2023.

Anna Davis,

General Counsel.

[FR Doc. 2023–00183 Filed 1–6–23; 8:45 am]

BILLING CODE 6732–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (FTC or Commission) is seeking public comment on its proposal to extend an additional three years the Office of Management and Budget clearance for information collection requirements of its the FTC's Rule Governing Pre-Sale Availability of Written Warranty Terms. The current clearance expires on May 31, 2023.

DATES: Comments must be received on or before March 10, 2023.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Paperwork Reduction Act Comment: FTC File No. P072108'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Laura Basford, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–2343.

SUPPLEMENTARY INFORMATION:

Title: Pre-Sale Availability of Written Warranty Terms (Pre-Sale Availability Rule or Rule), 16 Part CFR 702.

OMB Control Number: 3084–0112.

Type of Review: Extension of a currently approved collection.

Background: The Pre-Sale Availability Rule, 16 CFR part 702, is one of three rules [1] that the FTC issued as required by the Magnuson Moss Warranty Act, 15 U.S.C. 2301 *et seq.* (Warranty Act or Act).[2] The Pre-Sale Availability Rule requires sellers and warrantors to make the text of any written warranty on a consumer product costing more than $15 available to the consumer before sale. Among other things, the Rule requires sellers to make the text of the warranty readily available either by (1) displaying it in close proximity to the product or (2) furnishing it on request and posting signs in prominent locations advising consumers that the warranty is available. The Rule requires warrantors to provide materials to enable sellers to comply with the Rule's requirements and also sets out the methods by which warranty information can be made available before the sale if the product is sold through catalogs, mail order, or door to door sales. In addition, in 2016, the FTC revised the Rule to allow warrantors to post warranty terms on internet websites if they also provide a non-internet based method for consumers to obtain the warranty terms and satisfy certain other conditions.[3] The revised Rule also allows certain sellers to display warranty terms pre-sale in an electronic format if the warrantor has used the online method of disseminating warranty terms.

As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Pre-Sale Availability Rule.

Burden Statement

Total annual hours burden: 2,764,837.

In its 2019 submission to OMB, FTC staff estimated that the information collection burden of making the disclosures required by the Pre-sale Availability Rule was approximately 3,069,314 hours per year. Although there has been no change in the Rule's information collection requirements since 2019, staff has adjusted downward its previous estimate of the number of manufacturers subject to the Rule based on recent Census data. Based on that data, staff now estimates that there are approximately 27,094 manufacturers subject to the Rule.[4] In addition, staff has adjusted downward its previous estimate of the number of retailers subject to the Rule based on recent Census data. There are now an estimated 523,164 retailers impacted by the Rule.[5] These estimates likely overstate the number of manufacturers and retailers because some of the included manufacturers and retailers may make and sell products that are not covered by the Rule.

In prior years, staff categorized retailers and manufacturers based on their size, and applied different time estimates for complying with the Rule based on whether the entity was large or small. This year, staff instead applies a single time estimate to all retailers and another to all manufacturers, regardless of size. These estimates are intended to be an average time burden, reflecting the typical burden across the full spectrum of retailers and manufacturers, and taking into account the number of large and small entities from prior years. This approach is consistent with how staff have estimated the time burden for the Warranty Rule, 16 CFR part 701, another rule the FTC issued under the Act.

Staff estimates that retailers spend, on average, 5 hours per year to comply with the Rule. Accordingly, the total annual burden for retailers is approximately 2,615,820 hours (523,164 retailers x 5 burden hours). Staff estimates that manufacturers spend an average of 5.5 hours per year to comply with the Rule. Accordingly, the total annual burden incurred by manufacturers is approximately 149,017 hours (27,094 manufacturers × 5.5 hours).

Thus, the total annual burden for all covered entities is approximately 2,764,837 hours (2,615,820 hours for retailers + 149,017 hours for manufacturers).

Total annual labor cost: $67,738,531.

The work required to comply with the Pre-Sale Availability Rule entails a mix of clerical work and work performed by sales associates. Staff estimates that half of the total burden hours would likely be performed by sales associates. At the manufacturing level, this work would entail ensuring that the written warranty is available for every warranted consumer product. At the retail level, this work would entail ensuring that the written warranty is made available to the consumer prior to sale. The remaining half of the work required to comply with the Pre-Sale Availability Rule is clerical in nature, *e.g.,* shipping or otherwise providing copies of manufacturer warranties to retailers, along with retailer maintenance of the warranties. Applying a sales associate wage rate of $26/hour to half of the burden hours and a clerical wage rate of $23/hour to half of the burden hours, the total annual labor cost burden is approximately $67,738,531 (1,382,419 hours × $26 per hour) + (1,382,419 hours × $23 per hour).[6]

Total annual capital or other non-labor costs: De minimis.

[1] The other two rules relate to the information that must appear in a written warranty on a consumer product costing more than $15 if a warranty is offered and minimum standards for informal dispute settlement mechanisms that are incorporated into a written warranty.

[2] 40 FR 60168 (Dec. 31, 1975).

[3] 81 FR 63664–70 (Sept. 15, 2016).

[4] The 2019 estimate was that 31,029 manufacturers were subject to the Rule.

[5] The 2019 estimate was that 575,177 retailers were subject to the Rule.

[6] The wage rates are derived from occupational data found in the National Occupational Employment and Wage Estimates—May 2021, U.S. Bureau of Labor Statistics, released March 31, 2022: *https://www.bls.gov/oes/current/oes_nat.htm.*

The vast majority of retailers and warrantors already have developed systems to provide the information the Rule requires. Compliance by retailers typically entails keeping warranties on file electronically, in binders or otherwise, and posting an inexpensive sign indicating warranty availability. Warrantor compliance under the 2016 amendments entails providing retailers, together with the warranted good, a copy of the warranty or the address of the warrantor's internet website where the consumer can review and obtain the warranty terms, along with the contact information where the consumer may use a non-internet based method to obtain a free copy of the warranty terms. Commission staff believes that, in light of the amendments, annual capital or other non-labor costs will remain de minimis.

Request for Comments

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of maintaining records and providing disclosures to consumers. All comments must be received on or before March 10, 2023.

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before March 10, 2023. Write ''Paperwork Reduction Act Comment: FTC File No. P072108'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

Due to the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Paperwork Reduction Act Comment: FTC File No. P072108'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will become publicly available at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov,* we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 10, 2023. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2023–00180 Filed 1–6–23; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (''PRA''), the Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget (''OMB'') clearance for information collection requirements in its Informal Dispute Settlement Procedures Rule (''the Dispute Settlement Rule'' or ''the Rule''). The current clearance expires on July 31, 2023.

DATES: Comments must be received on or before March 10, 2023.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Dispute Settlement Rule; PRA Comment: FTC File No. P072108'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Laura Basford, General Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–2343, *lbasford@ftc.gov.*

SUPPLEMENTARY INFORMATION:

Title: Informal Dispute Settlement Procedures Rule (the Dispute Settlement Rule or the Rule), 16 CFR part 703.

OMB Control Number: 3084–0113.

Type of Review: Extension of a currently approved collection.

Abstract: The Dispute Settlement Rule is one of three rules [1] that the FTC implemented pursuant to requirements of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 *et seq.* (''Warranty Act'' or ''Act'').[2] The Dispute Settlement Rule, 16 CFR part 703, specifies the minimum standards which must be met by any informal dispute settlement mechanism (''IDSM'') that is incorporated into a written consumer product warranty and which the consumer is required to use before pursuing legal remedies under the Act in court (known as the ''prior resort requirement'').[3]

The Dispute Settlement Rule standards for IDSMs include requirements concerning the mechanism's structure (*e.g.,* funding, staffing, and neutrality), the qualifications of staff or decision makers, the mechanism's procedures for resolving disputes (*e.g.,* notification, investigation, time limits for decisions, and follow-up), recordkeeping, and annual audits. The Rule requires that IDSMs establish written operating procedures and provide copies of those procedures upon request.

Likely Respondents: Warrantors that Use an IDSM (Automobile Manufacturers) and Informal Dispute Settlement Mechanisms.

Estimated Annual Burden Hours: 9,267 (derived from 6,210 recordkeeping hours in addition to 2,070 reporting hours and 987 disclosure hours).

Estimated Annual Labor Costs: $239,093.

Estimated Annual Capital or Other Non-labor Costs: $344,560.

As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements associated with the Dispute Settlement Rule.

Burden Statement

The primary burden from the Dispute Settlement Rule comes from the recordkeeping requirements that apply to IDSMs that are incorporated into a consumer product warranty through a prior resort clause. Currently, there are two IDSMs operating under the Rule: (1) the BBB AUTO LINE, and (2) the National Center for Dispute Settlement (''NCDS''). Although the Rule's information collection requirements have not changed since 2020, staff has adjusted its previous estimates slightly upward for its 2023 calculations because the two IDSMs indicate that, on average, more disputes have been handled since the previous submission to OMB (12,241 disputes/year projected in 2020; 12,420 disputes/year projected in 2023). The calculations underlying staff's new estimates follow.

Recordkeeping: The Rule requires IDSMs to maintain records of each consumer warranty dispute. Both the BBB AUTO LINE and NCDS report the number of disputes closed each year. Staff is using those numbers to project what will happen over the next three years of OMB clearance for the Rule. The BBB AUTO LINE handles an average of 9,365 disputes each year.[4] NCDS handles an average of 3,055 disputes each year.[5] Based on these figures, staff estimates that the average number of IDSM disputes covered by the Rule is approximately 12,420. Case files must include information such as the consumer's contact information, the make and model of the product at issue, all letters or other correspondence submitted by the consumer or warrantor, and all evidence collected to resolve the dispute. Because maintaining individual case records is a necessary function for any IDSM, much of the burden would be incurred in the ordinary course of business. Nonetheless, staff estimates that maintaining individual case files imposes an additional burden of 30 minutes per case.

Accordingly, the total annual recordkeeping burden is approximately 6,210 hours ((12,420 disputes × 30 minutes of burden/dispute) ÷ 60 minutes/hour).

Reporting: The Rule requires IDSMs to update indexes, complete semiannual statistical summaries, and submit an annual audit report to the FTC. Staff estimates that covered entities spend approximately 10 minutes per case for these activities, resulting in a total annual burden of approximately 2,070 hours ((12,420 disputes × 10 minutes of burden/dispute) ÷ 60 minutes/hour).

Disclosure

(a) Warrantors' Disclosure Burden

As it did in 2020, staff has determined that it would be appropriate to account for the disclosure burden as it relates to warrantors based on two types of additional information that warrantors are required to disclose under the Rule: (1) information concerning the IDSM and its procedures; and (2) information that makes consumers aware of the existence of the IDSM.[6]

A review of the annual audits of the BBB AUTO LINE and the NCDS indicates that there are approximately twenty-six automobile manufacturers covered by the Rule. Staff assumes that each manufacturer spends an average of thirty hours a year creating, revising, and distributing the informational materials necessary to comply with the Rule, resulting in an annual disclosure burden of 780 hours (26 manufacturers × 30 hours).

(b) IDSMs' Disclosure Burden

Under the Rule, the IDSMs are required to provide to interested consumers, upon request, copies of the various types of information the IDSM possesses, including its annual audits. In addition, consumers who have filed disputes with the IDSM also have a right to copies of their records. IDSMs are permitted to charge for providing both types of information.

Based on discussions with representatives of the two IDSMs, staff estimates that the burden imposed by these disclosure requirements is approximately 207 hours per year. This estimate draws from the average number of disputes closed each year with the IDSMs (12,420) and the assumption that twenty percent of consumers request copies of the records pertaining to their disputes (approximately 2,484 disputes).[7] Staff estimates that copying such records would require approximately 5 minutes per dispute.[8] Staff estimates a total disclosure burden of approximately 207 hours ((2,484

[1] The other two rules relate to the information that must appear in any written warranty offered on a consumer product costing more than $15 and the pre-sale availability of warranty terms.

[2] 40 FR 60168 (Dec. 31, 1975).

[3] The Dispute Settlement Rule applies only to those firms that choose to require consumers to use an IDSM. Neither the Rule nor the Act requires warrantors to set up IDSMs. A warrantor is free to set up an IDSM that does not comply with the Rule as long as the warranty does not contain a prior resort requirement.

[4] According to its annual audits, the BBB AUTO LINE closed 10,351 disputes in 2019, 9,044 in 2020, and 8,700 in 2021. This includes disputes for at least two manufacturers that do not include a prior resort requirement. Therefore, this number likely overstates the number of disputes covered by the Rule.

[5] According to NCDS' annual audits, the number of disputes both within its jurisdiction and closed each year are 3,861 in 2019, 2,864 in 2020, and 2,439 in 2021.

[6] 16 CFR 703.2(b).

[7] This assumes each dispute is associated with one consumer.

[8] In addition, some case files are provided to consumers electronically, which further reduces the paperwork burden borne by the IDSMs.

disputes × 5 minutes of burden/dispute) ÷ 60 minutes/hour) for the IDSMs.

Accordingly, the total PRA-related annual hours burden attributed to the Rule is approximately 9,267 (6,210 hours for recordkeeping plus 2,070 hours for reporting plus 780 hours for warrantors' disclosures and 207 hours for IDSM disclosures).

Total Annual Labor Cost: $239,093.

Recordkeeping: Staff assumes that IDSMs use clerical staff to comply with the recordkeeping requirements contained in the Rule at an hourly rate of approximately $19.[9] Thus, the labor cost associated with the 6,210 annual burden hours for recordkeeping is approximately $117,990 (6,210 burden hours × $19 per hour).

Reporting: Staff assumes that IDSMs also use clerical support staff at an hourly rate of $19 to comply with the reporting requirements. Thus, the labor cost associated with the 2,070 annual burden hours for reporting is approximately $39,330 (2,070 burden hours × $19 per hour).

Disclosure: Staff assumes that the work required to comply with the warrantors' disclosure requirements entails an equal mix of legal, clerical, and graphic design work. Staff assumes that one third of the total disclosure hours for warrantors (260 hours) require legal work at a rate of $250 per hour, one third require graphic design at a rate of $29 per hour,[10] and one third require clerical work at a rate of $19 per hour. This results in a disclosure labor burden of $77,480 for warrantors ((260 × $250) + (260 × $29) + (260 × $19)).

In addition, staff assumes that IDSMs use clerical support at an hourly rate of $19 to reproduce records and, therefore, the labor cost associated with the 207 annual hours of disclosure burden for IDSMs is approximately $3,933 (207 burden hours × $19 per hour).

Accordingly, the combined total annual labor cost for PRA-related burden under the Rule is approximately $239,093 ($117,990 for recordkeeping + $39,330 for reporting + $81,413 for disclosures).

Total Annual Capital or Other Non-Labor Costs: $344,560.

Total Capital and Start-Up Costs: The Rule imposes no appreciable current capital or start-up costs. The vast majority of warrantors have already developed systems to retain the records and provide the disclosures required by the Rule. Rule compliance does not require the use of any capital goods, other than ordinary office equipment, to which providers already have access.

The Rule imposes one additional cost on IDSMs operating under the Rule, which is the annual audit requirement. According to representatives of the IDSMs, the vast majority of costs associated with this requirement consist of the fees paid to the auditors and their staffs. Representatives of the IDSMs previously estimated a combined cost of $300,000 associated with the audits. In light of cost increases over the past three years, staff has increased that estimate by five percent, estimating that the annual audit requirement now costs $315,000.

Other Non-Labor Costs: As discussed above, staff assumes that approximately twenty percent of dispute files (approximately 2,484 files) are requested by consumers. Staff also estimates that only five percent of consumers will request a copy of the IDSM's audit report (approximately 612 audit reports).[11] Staff bases this assumption on the number of consumer requests received by the IDSMs in the past and the fact that the IDSMs' annual audits are available online. Staff estimates that the average dispute-related file contains 35 pages and a typical annual audit file contains approximately 200 pages. Staff estimates copying costs of 14 cents per page.

Thus, the total annual copying cost for dispute-related files is approximately $12,172 (35 pages per file × $0.14 per page × 2,484 disputes) and the total annual copying cost for annual audit reports is approximately $17,388 (200 pages per audit report × $0.14 per page × 621 audit reports). Accordingly, the total cost attributed to copying under the Rule is approximately $29,560.

Thus, the total non-labor cost under the Rule is approximately $344,560 ($315,000 for auditor fees + $29,560 for copying costs).

Request for Comments

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of maintaining records, providing reports to the government and providing disclosures to consumers.

For the FTC to consider a comment, we must receive it on or before March 10, 2023. Your comment, including your name and your state, will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

You can file a comment online or on paper. Due to the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you file your comment on paper, write ''Dispute Settlement Rule; PRA Comment: FTC File No. P072108'' on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will become publicly available at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and

[9] The wage rate is derived from occupational data found in the Bureau of Labor Statistics, *Occupational Employment and Wages* (Mar. 2022), *available at https://www.bls.gov/news.release/ocwage.htm.* The clerical wage rate estimate is based on the mean hourly wage data for the category of ''Office Clerks, general'' ($18.75), rounded up to the nearest whole dollar amount ($19).

[10] *Id.* The wage rate estimate for graphic design work is based on the mean hourly wage data for the category of ''Graphic designers'' ($28.83), rounded up to the nearest whole dollar amount ($29).

[11] This estimate assumes each dispute is associated with one consumer.

FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) —including, in particular, competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must (1) be filed in paper form, (2) be clearly labeled ''Confidential,'' and (3) comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov,* we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 10, 2023. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2023–00163 Filed 1–6–23; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') requests that the Office of Management and Budget (''OMB'') extend for an additional three years the current Paperwork Reduction Act (''PRA'') clearance for its shared enforcement authority with the Consumer Financial Protection Bureau (''CFPB'') for information collection requirements contained in the CFPB's Regulation O. That clearance expires on March 31, 2023.

DATES: Comments must be received on or before March 10, 2023.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Paperwork Reduction Act Comment: FTC File No. P072108'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Stephanie Rosenthal, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington, DC 20580, (202) 326–3332.

SUPPLEMENTARY INFORMATION:

Title: Regulation O, 12 CFR part 1015.

OMB Control Number: 3084–0157.

Type of Review: Extension of currently approved collection.

Estimated Number of Respondents: 118.

Estimated Annual Burden Hours: 354.

Abstract: The FTC and CFPB share enforcement authority for the Mortgage Assistance Relief Services (Regulation O), 12 CFR part 1015.[1] The rule includes disclosure requirements to assist purchasers of mortgage assistance relief services in making well-informed decisions and avoiding unfair or deceptive acts and practices. The information that must be retained under Regulation O's recordkeeping requirements is used by the CFPB and the FTC for enforcement purposes and to ensure compliance by MARS providers with Regulation O. The information is requested only on a case-by-case basis.

As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in Regulation O.

Burden Statement

Because the FTC and CFPB share enforcement authority for this rule, the FTC is seeking clearance for one-half of the following burden estimates. These estimates are based on the agencies' law enforcement experience and the recent analysis conducted as part of the CFPB's clearance renewal for the information collections associated with Regulation O.[2] The FTC and CFPB estimate that there are approximately 118 for-profit, non-attorney entities offering MARS services and subject to Regulation O's requirements.[3]

Estimated annual hours burden: 354 (FTC share).

FTC staff estimates that compliance with Regulation O's disclosure requirements for MARS providers requires 6 hours of labor annually.[4] Multiplying this figure by 118 entities yields a total burden for covered providers of 708 hours annually.[5] For PRA purposes, the FTC and CFPB share enforcement authority and split the information collection burden associated with the Rule equally. As a result, the FTC assumes 354 hours of this total annual hours of burden.

Estimated associated labor cost: $12,195 (FTC share).

In calculating the associated labor costs, FTC staff estimates that a compliance officer or equivalent will prepare the required disclosures at an hourly rate of $34.45/hr.[6] Thus, the estimated annual labor cost is $24,390 (118 providers × 6 hours × $34.45) of which the FTC assumes half, or $12,195.

[1] Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), Public Law 111–203, 124 Stat. 1376 (2010), transferred the Commission's rulemaking authority under the mortgage provisions in section 626 of the 2009 Omnibus Appropriations Act, as amended, to the CFPB. On December 16, 2011, the CFPB republished the Mortgage Assistance Relief Services (''MARS'') Rule as Regulation O (12 CFR pt. 1015). As a result, the Commission subsequently rescinded its MARS Rule (16 CFR pt. 322). Nonetheless, under the Dodd-Frank Act, the FTC retains its authority to bring law enforcement actions to enforce Regulation O.

[2] Consumer Financial Protection Bureau, *Agency Information Collection Activities: Comment Request,* 87 FR 40514 (Oct. 4, 2022).

[3] *See* CFPB Supporting Statement, *Mortgage Assistance Relief Services (Regulation O) 12 CFR 1015,* OMB Control No: 3170–0007 (July 11, 2022), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202205-3170-004;* clearance expires on October 31, 2025.

[4] *Id.*

[5] *Id.*

[6] This estimate is based on the median hourly wage for a Compliance Officer (occupation code 13–1041) of $34.45 provided by the Bureau of Labor Statistics. *See* BLS Occupational Employment and Wages estimate of the median hourly wage for a Compliance Officer (occupation code 13–1041) of $34.45, *available at https://www.bls.gov/oes/current/oes131041.htm.*

Information collection	Number of respondents	Annual burden hours per respondent	Total burden hours	Associated hourly labor cost	Total respondent costs
	118	6	708	$34.45	$24,390
FTC 50% Share			354		12,195

Request for Comments

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of maintaining records and providing disclosures to consumers. All comments must be received on or before March 10, 2023.

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before March 10, 2023. Write ''Paperwork Reduction Act Comment: FTC File No. P072108'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

Due to the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Paperwork Reduction Act Comment: FTC File No. P072108'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will become publicly available at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov,* we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 10, 2023. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2023–00179 Filed 1–6–23; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–3245]

Joint Meeting of the Nonprescription Drugs Advisory Committee and the Anesthetic and Analgesic Drug Products Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Nonprescription Drugs Advisory Committee and the Anesthetic and Analgesic Drug Products Advisory Committee. The general function of the committees is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held virtually on February 15, 2023, from 9 a.m. to 5:30 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2022–N–3245. Please note that late, untimely filed comments will not be considered. The docket will close on February 14, 2023. The *https://www.regulations.gov* electronic filing system will accept

comments until 11:59 p.m. Eastern Time at the end of February 14, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before February 1, 2023, will be provided to the committees. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–N–3245 for ''Joint Meeting of the Nonprescription Drugs Advisory Committee and the Anesthetic and Analgesic Drug Products Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Moon Choi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–2894, email: *NDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. The committees will discuss supplemental new drug application 208411/S–006, for NARCAN (naloxone hydrochloride) nasal spray, 4 mg/0.1 mL, submitted by Emergent BioSolutions Inc. NARCAN is proposed for nonprescription treatment of known or suspected opioid overdose, as manifested by respiratory and/or central nervous system depression. The issues for discussion will be on the adequacy of the data supporting the nonprescription application. This product represents a potential first in class product in a new therapeutic category for nonprescription drugs.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committees. All electronic and written submissions to the Docket (see **ADDRESSES**) on or before February 1, 2023, will be provided to the committees. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 3 p.m.

Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before January 24, 2023. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by January 25, 2023.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Moon Choi (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 29, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–00110 Filed 1–6–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Evidence Based Telehealth Network Program Measures

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than February 8, 2023.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or by mail to the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Samantha Miller, the acting HRSA Information Collection Clearance Officer at 301–594–4394.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information collection request title for reference.

Information Collection Request Title: Evidence Based Telehealth Network Program Measures OMB No. 0906–0043—Extension.

Abstract: This ICR is for an extension of currently approved measures for the Office for the Advancement of Telehealth (OAT)'s Evidence Based Telehealth Network Program, under which OAT administers cooperative agreements in accordance with section 330I of the Public Health Service Act (42 U.S.C. 254c–14), as amended. The purpose of this program is to demonstrate how telehealth programs and networks can improve access to quality health care services. This program will work to help HRSA assess the effectiveness of evidence-based practices with the use of telehealth for patients, providers, and payers.

Need and Proposed Use of the Information: The measures will enable HRSA and OAT to capture awardee-level and aggregate data that illustrate the impact and scope of federal funding along with assessing these efforts. The measures cover the principal topic areas of interest to OAT, including: (a) population demographics; (b) access to health care; (c) cost savings and cost-effectiveness; and (d) clinical outcomes.

Likely Respondents: The respondents would be award recipients of the Evidence Based Telehealth Network Program.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Evidence-Based Telehealth Network Program Report	14	12	12	11	1,848
Telehealth Performance Measurement Report	14	1	1	5	70
Total	*14				1,918

*HRSA estimates 14 unique respondents, each completing the two forms.

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance

the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–00096 Filed 1–6–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Establishment of the Center for Forecasting and Outbreak Analytics

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) has modified its structure. This notice announces the establishment of the Center for Forecasting and Outbreak Analytics.

DATES: This reorganization was approved by the Secretary of Health and Human Services on December 19, 2022, and became effective on January 4, 2023.

SUPPLEMENTARY INFORMATION: Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 87 FR 51670–51675, dated August 23, 2022) is amended to reflect the reorganization of the Office of the Director, Centers for Disease Control and Prevention.

Background: Establishing the Center for Forecasting and Outbreak Analytics is the result of the National Security Memorandum #1 (Section 5B) indicating the need to establish an interagency national Center and modernize global early warning and trigger systems to prevent, detect, respond to, and recover from emerging biological threats, as well as Section 2404 of the *American Rescue Plan Act of 2021,* Public Law 117–2, which provides funding in support of public health data surveillance and analytic infrastructure modernization initiatives at the Centers for Disease Control and Prevention. Specifically, the changes are as follows:

Under Part C, Section C–B, Organization and Functions, make the following change:

Center for Forecasting and Outbreak Analytics (CD)

The mission of the Center for Forecasting and Outbreak Analytics (CFA) is to advance U.S. forecasting, outbreak analytics, and surveillance capacities related to disease outbreaks, epidemics, and pandemics to support public health response and preparedness. To carry out its mission, CFA will: (1) forecast, model, and characterize the risks associated with outbreaks; (2) inform public health decision-makers and the public; (3) innovate public health solutions and capabilities related to forecasting, surveillance, and analytics; (4) accelerate access to and use of data for public health decision-makers to mitigate the effects of disease threats; and (5) serves as a hub for research and development for public health analytics and modeling.

Office of the Director (CD1)

(1) Provides strategic direction regarding forecasting, surveillance, and data analytics; (2) coordinates strategic activities in areas of outbreak, epidemic and pandemic forecasting, surveillance, and data analytics within CDC and across the United States Government (USG); (3) guides the facilitation and coordination across federal, state, tribal, local, or territorial (STLT), and healthcare entities and engagement with relevant federal advisory committees with respect to disease modeling, forecasting, outbreak analytics, and critical data collections to support those efforts; (4) manages, directs, coordinates, and evaluates the activities of the Center; (5) defines goals and objectives for policy formation, scientific oversight, and guidance in program planning and development related to forecasting, surveillance, and analytics; (6) provides oversight for the evaluation of programmatic performance of forecasting, surveillance, and analytics; (7) manages inter-governmental and external affairs and cultivates strategic partnerships related to CFA activities; (8) ensures scientific quality, integrity, and clearance across the Center; (9) provides guidance and strategic oversight to the processes within the Center that access, collect, manage, analyze, and visualize data, including assistance for involvement with relevant federal advisory committees and other stakeholder groups; (10) collaborates and consults with other Centers, working groups, state and local health departments, other federal agencies, international partners, and other partners on CFA activities; (11) represents CFA and CDC at professional and scientific meetings on topics consistent with CFA's mission; and (12) establishes and oversees the two offices within the Office of the Director.

Office of Policy and Communications (CD12)

(1) Provides leadership on issues management, budget formulation, and performance integration; (2) reviews, coordinates, and prepares legislation, briefing documents, Congressional testimony, and other legislative matters; (3) coordinates the development, review, and approval of federal regulations, **Federal Register** notices and announcements, Freedom of Information Act requests, General Accounting Office and Inspector General reports, and related activities for the Center; and (4) establishes and implements a communication strategy in support of CFA overarching goals and priorities.

Office of Management Services (CD13)

(1) Provides overall budgetary, employee relations, human capital management, logistics, and administrative support; (2) provides direction, strategy, analysis, and operational support in all aspects of human capital management, including workforce and career development and human resources operations; (3) manages operational budget processes, including planning, execution, and monitoring; (4) manages acquisition and grants management processes; (5) serves as point of contact on all matters concerning facilities management, property management, records management, equipment, travel, and space utilization and improvements; and (6) serves as coordinator of continuity of operations activities.

Inform Division (CDB)

(1) Communicates with expert disease modelers and emergency responders to provide public health policy decision support; (2) shares timely, actionable information with the federal government, STLT leaders, international partners, and the public; (3) works with and through public health partners to provide decision support and technical assistance; (4) develops, maintains, enhances data visualization capabilities to support CFA mission; (5) coordinates real-time monitoring efforts between CDC subject matter experts and USG interagency; and (6) maintains liaison with related Center staff, other officials of CDC, USG, and private sector partners.

Office of the Director (CDB1)

(1) Works with CFA OD to ensure spending plans and budgets are in line with overall division strategies and priorities; (2) ensures the CFA strategy is executed by the Inform Division and aligned with overall CDC goals; (3) develops execution strategies for outbreak communication, data visualization, and real-time monitoring efforts; (4) builds leadership at the division and team levels; (5) identifies and coordinates synergies between the division and federal, STLT, and international partners; (6) works directly with public health partners to provide decision support; (7) proposes resource priorities throughout the budget cycle; (8) works with CDC procurement office to facilitate procurement opportunities with industry partners; (9) ensures scientific quality, integrity, and clearance across the division; and (10) liaises with related Center staff, other officials of CDC, USG, and private sector partners.

Predict Division (CDD)

(1) Generates forecasts and analyses to support outbreak preparedness and response efforts; (2) provides real-time monitoring of disease outbreaks; (3) collaborates with federal, state, territorial, local, and tribal leaders and international partners on performing analytics to support decision-making; (4) assists with tabletop exercises to match policies and resources with forecasts; (5) supports the development of pandemic planning guidance; (6) develops scientific collaborations to harmonize analytic approaches and develop tools; (7) maintains analytic data sets and models during emergencies to address questions that arise with short latency; (8) identifies and gains access to sources of data relevant to outbreak analytics, forecasting, and modeling; and (9) builds, maintains, and improves modeling and forecasting platforms to be deployed during public health emergencies, including public-facing forecasts.

Office of the Director (CDD1)

(1) Works with CFA Office of the Director to ensure spending plans and budgets are in line with overall division strategies and priorities; (2) ensures the CFA strategy is executed by the Predict Division and aligned with overall CDC goals; (3) develops execution strategies for pandemic forecasting, surveillance, and outbreak response; (4) builds leadership at the division and team levels; (5) evaluates the strategies, focus, and prioritization of the division; (6) identifies and coordinates synergies between the division and federal, STLT, and international partners; (7) facilitates tabletop exercises; (8) proposes resource priorities throughout the budget cycle; (9) works with CDC procurement office to facilitate procurement opportunities with industry partners; (10) ensures scientific quality, integrity, and clearance across the division; and (11) oversees the development and successful deployment of modeling and forecasting capabilities in emergency response situations.

Real Time Monitoring Branch (CDDB)

(1) Monitors outbreak events through established analytical tools and surveillance methods; (2) generates short-term forecasts of disease spread during an active outbreak; (3) utilizes data of previous outbreaks to monitor and forecast the behavior of potential and/or current outbreaks; and (4) generates multiple scenario models of potential/current outbreaks using established methodologies.

Analytics Response Branch (CDDC)

(1) Utilizes established analytical tools to help inform decision making for key partners during a potential and/or current outbreak; (2) Analyzes disease spread through existing data sources to identify key populations/settings at highest risk; (3) identifies potential economic impact of a forecasted/ongoing outbreak event; (4) provides essential information to key partners in decisions surrounding community migration; (5) utilizes data analytics to inform decisions on potential variants of a pathogen; and (6) works with key partners to inform decisions on medical countermeasures during an active outbreak.

Technology and Innovation Division (CDE)

(1) Oversees the development, maintenance, and improvement of CFA's analytical architecture; (2) provides high-level support for CFA's strategic direction with respect to technology and innovative practices; (3) oversees product development for CFA and CFA's customers; (4) collaborates with other divisions within CFA to support research and development and provide technical assistance on an adhoc basis; (5) oversees the deployment of grants and cooperative agreements to support innovation within the Center.

Office of the Director (CDE1)

(1) Works with CFA OD to ensure spending plans and budgets are in line with overall division strategies and priorities; (2) ensures that the CFA strategy is executed by the Technology & Innovation Division and aligned with overall CDC goals; (3) develops execution strategies for maintaining CFA's analytical architecture and supporting research and development across the division; (4) builds leadership at the division and branch levels; (5) coordinates with other divisions across CFA to support modeling, code development, and general research & development; (6) maintains strategic relationships with academic, private sector, and interagency partners; (7) works with CDC procurement office to facilitate procurement opportunities with industry partners; and (9) ensures scientific quality, integrity, and clearance across the division.

Technology Branch (CDEB)

(1) Establishes and maintains CFA analytical architecture; (2) devises information technology practices and procedures, and provides direction, innovation, planning, and evaluation for information technology systems, services, security, and resources for CFA; (3) monitors projects for effective focus on the analytical, informatics, data management, and statistical infrastructure to deliver timely, quality data, accurate analysis services, and dependable software products and systems to customers and partners; (4) develops, maintains, and operates analytics technology platforms; (5) engages in product development for CFA systems, enterprise systems, and analytical tools; (6) supports CFA in modeling and general code development, data engineering, and software development; (7) enables cloud environment architecture, development, deployment, and access; (8) supports CDC, USG efforts to maintain, enhance, and develop relevant systems that will address the CFA mission; and (9) maintains awareness of trends in technology and evaluates technology that would benefit the CFA mission.

Innovate Branch (CDEC)

(1) Supports research and development to improve outbreak forecasts and analyses; (2) collaborates with academic, private sector, and interagency partners; (3) creates translational tools, products, and enterprise enhancements to make analyses of pandemic data flexible, fast, and scalable for CFA customers including STLT authorities; (4) provides grants and cooperative agreements to support innovations in data analytics and modeling.

Delegations of Authority

All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

(Authority: 44 U.S.C. 3101)

Xavier Becerra,

Secretary of Health and Human Services.

[FR Doc. 2023–00151 Filed 1–6–23; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; PHS–2023–1—NIH/NIAID 117 (Adjuvant Development for Vaccines for Infectious and Immune-Mediated Diseases).

Date: January 25, 2023.

Time: 9:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G43, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Sandip Bhattacharyya, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G42, Rockville, MD 20852, (240) 292–0189, *sandip.bhattacharyya@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 3, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–00143 Filed 1–6–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Interagency Coordinating Committee on the Validation of Alternative Methods Communities of Practice Webinar on Emerging Approaches for Anchoring Biological Relevance of New Approach Methodologies; Notice of Public Webinar; Registration Information

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) announces a public webinar ''Emerging Approaches for Anchoring Biological Relevance of New Approach Methodologies.'' The webinar is organized on behalf of ICCVAM by the National Toxicology Program Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM). Interested persons may participate via the web meeting platform. Time will be allotted for questions from the audience. Information about the webinar and registration are available at *https://ntp.niehs.nih.gov/go/commprac-2023.*

DATES:

Webinar: January 30, 2023, 10:00 a.m. to approximately 12:00 noon EST.

Registration for Webinar: January 10, 2023, until 12:00 noon EST January 30, 2023. Registration to view the webinar is required.

ADDRESSES: Webinar web page: *https://ntp.niehs.nih.gov/go/commprac-2023.*

FOR FURTHER INFORMATION CONTACT: Dr. Nicole Kleinstreuer, Director, NICEATM, email: *nicole.kleinstreuer@nih.gov,* telephone: (984) 287–3150.

SUPPLEMENTARY INFORMATION:

Background: ICCVAM promotes the development and validation of toxicity testing methods that protect human health and the environment while replacing, reducing, or refining animal use. ICCVAM also provides guidance to test method developers and facilitates collaborations that promote the development of new test methods. To address these goals, ICCVAM will hold a Communities of Practice webinar on ''Emerging Approaches for Anchoring Biological Relevance of New Approach Methodologies.''

''New approach methodologies'' (NAMs) refers to approaches that can be used alone or in combination to provide information on chemical hazard and risk assessment without traditional animal tests. Traditional approaches to evaluating NAMs consider how well the results of chemical tests using NAMs correspond with the results of animal tests of the same chemicals. However, the usefulness of this approach is limited, especially when the animal results are variable, or the animal model does not adequately represent the species or effect of regulatory interest.

This webinar will discuss approaches to build confidence in NAMs that are based on evaluating the biological relevance of the NAM to the species of regulatory interest. Ongoing activities and key insights will be described in three presentations by speakers from the academic and private sector focusing on applications of small model organisms, organs-on-chips, and models of absorption, distribution, metabolism, and excretion. The preliminary agenda and additional information about presentations will be posted at *https://ntp.niehs.nih.gov/go/commprac-2023* as available.

Webinar and Registration: This webinar is open to the public with time scheduled for questions by participants following each presentation. Registration for the webinar is required. Registration will open on or before January 10, 2023 and remain open through 12:00 noon EST on January 30, 2023. Registration is available at *https://ntp.niehs.nih.gov/go/commprac-2023.* Interested individuals are encouraged to visit this web page to stay abreast of the most current webinar information. Registrants will receive instructions on how to access and participate in the webinar in the email confirming their registration.

Background Information on ICCVAM and NICEATM: ICCVAM is an interagency committee composed of representatives from 17 federal regulatory and research agencies that require, use, generate, or disseminate toxicological and safety testing information. ICCVAM conducts technical evaluations of new, revised, and alternative safety testing methods and integrated testing strategies with regulatory applicability. ICCVAM also promotes the scientific validation and regulatory acceptance of testing methods that more accurately assess the safety and hazards of chemicals and products and replace, reduce, or refine animal use.

The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3) establishes ICCVAM as a permanent interagency committee of the National Institute of Environmental Health Sciences and provides the authority for ICCVAM involvement in activities relevant to the development of alternative test methods. Additional information about ICCVAM can be found at *https://ntp.niehs.nih.gov/go/iccvam.*

NICEATM administers ICCVAM, provides support for ICCVAM-related activities, and conducts and publishes analyses and evaluations of data from new, revised, and alternative testing approaches. NICEATM and ICCVAM work collaboratively to evaluate new and improved testing approaches applicable to the needs of U.S. federal agencies. NICEATM and ICCVAM welcome the public nomination of new, revised, and alternative test methods and strategies for validation studies and technical evaluations. Additional information about NICEATM can be found at *https://ntp.niehs.nih.gov/go/niceatm.*

Dated: January 3, 2023.

Brian R. Berridge,

Associate Director, National Toxicology Program, National Institutes of Health.

[FR Doc. 2023–00147 Filed 1–6–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Biobehavioral Medicine and Health Outcomes Study Section.

Date: February 6–7, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Mark A Vosvick, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, Bethesda, MD 20892, (301) 402–4128, *mark.vosvick@nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Motor Function, Speech and Rehabilitation Study Section.

Date: February 6–7, 2023.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Stephanie Nagle Emmens, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–6604, *nagleemmenssc@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Development—2 Study Section.

Date: February 6–7, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rass M Shayiq, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Clinical Management in General Care Settings Study Section.

Date: February 6–7, 2023.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lauren Fordyce, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, Bethesda, MD 20892, (301) 435–6998, *fordycelm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 3, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–00144 Filed 1–6–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Cellular, Molecular, and Immunobiology Study Section.

Date: February 1–2, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: George M. Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroimmunology and Brain Tumors Study Section.

Date: February 2–3, 2023.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue NW, Washington, DC 20037.

Contact Person: Aleksey Gregory Kazantsev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5201, Bethesda, MD 20817, 301–435–1042, *aleksey.kazantsev@nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Behavioral Neuroendocrinology, Neuroimmunology, Rhythms, and Sleep Study Section.

Date: February 2–3, 2023.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, Bethesda, Bethesda, MD 20814.

Contact Person: Michael Selmanoff, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5164,

MSC 7844, Bethesda, MD 20892, 301–435–1119, *selmanom@csr.nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Biology Structure and Regeneration Study Section.

Date: February 2–3, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yanming Bi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 451–0996, *ybi@csr.nih.gov*.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Development, Risk and Prevention Study Section.

Date: February 2–3, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anna L. Riley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, *rileyann@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Sensory-Motor Neuroscience Study Section.

Date: February 2–3, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alena Valeryevna Savonenko, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1009J, Bethesda, MD 20892, (301) 594–3444, *savonenkoa2@csr.nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Social Sciences and Population Studies A Study Section.

Date: February 2–3, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Suzanne Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *ryansj@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 3, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–00141 Filed 1–6–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2022–0017]

Notice of President's National Security Telecommunications Advisory Committee Meeting

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security.

ACTION: Notice of *Federal Advisory Committee Act* (FACA) meeting; request for comments.

SUMMARY: CISA is publishing this notice to announce the following President's National Security Telecommunications Advisory Committee (NSTAC) meeting. This meeting is open to the public.

DATES:

Meeting Registration: Registration to attend the meeting is required and must be received no later than 5 p.m. Eastern Time (ET) on February 16, 2023. For more information on how to participate, please contact *NSTAC@cisa.dhs.gov.*

Speaker Registration: Registration to speak during the meeting's public comment period must be received no later than 5 p.m. ET on February 14, 2023.

Written Comments: Written comments must be received no later than 5 p.m. ET on February 14, 2023.

Meeting Date: The NSTAC will meet on February 21, 2023, from 3 to 4 p.m. ET. The meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held via conference call. For access to the conference call bridge, information on services for individuals with disabilities, or to request special assistance, please email *NSTAC@cisa.dhs.gov* by 5 p.m. ET on February 16, 2023. The NSTAC is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

Comments: Members of the public are invited to provide comment on the issues that will be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated materials that may be discussed during the meeting will be made available for review at *https://www.cisa.gov/nstac* on February 6, 2023. Comments may be submitted by 5 p.m. ET on February 14, 2023 and must be identified by Docket Number CISA–2022–0017. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Please follow the instructions for submitting written comments.
- *Email: NSTAC@cisa.dhs.gov.* Include the Docket Number CISA–2022–0017 in the subject line of the email.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the Docket Number for this action. Comments received will be posted without alteration to *www.regulations.gov,* including any personal information provided. You may wish to review the Privacy & Security Notice available via a link on the homepage of *www.regulations.gov.*

Docket: For access to the docket and comments received by the NSTAC, please go to *www.regulations.gov* and enter docket number CISA–2022–0017.

A public comment period is scheduled to be held during the meeting from 3:30 to 3:40 p.m. ET. Speakers who wish to participate in the public comment period must email *NSTAC@cisa.dhs.gov* to register. Speakers should limit their comments to three minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, following the last request for comments.

FOR FURTHER INFORMATION CONTACT: Christina Berger, 202–701–6354, *NSTAC@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The NSTAC is established under the authority of Executive Order (E.O.) 12382, dated September 13, 1982, as amended by E.O. 13286, continued and amended under the authority of E.O. 14048, dated September 30, 2021. Notice of this meeting is given under FACA, 5 U.S.C. Appendix (Pub. L. 92–463). The NSTAC advises the President on matters related to national security and emergency preparedness (NS/EP) telecommunications and cybersecurity policy.

Agenda: The NSTAC will hold a conference call on Tuesday, February 21, 2023, to discuss current NSTAC activities and the government's ongoing cybersecurity and NS/EP communications initiatives. This meeting is open to the public and will

include: (1) remarks from the administration and CISA leadership on salient NS/EP and cybersecurity efforts; (2) a status update on the NSTAC Addressing the Misuse of Domestic Infrastructure by Foreign Malicious Actors Subcommittee; and (3) a deliberation and vote on the *NSTAC Report to the President on a Strategy for Increasing Trust in the Information and Communications Technology and Services Ecosystem.*

Dated: January 3, 2023.

Christina Berger,

Designated Federal Officer, NSTAC, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2023–00181 Filed 1–6–23; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Implementation of a Parole Process for Haitians

ACTION: Notice.

SUMMARY: This notice describes a new effort designed to respond to and protect against a significant increase in the number of Haitian nationals crossing the border without authorization, as the U.S. Government continues to implement its broader, multi-pronged and regional strategy to address the challenges posed by irregular migration. Haitians who do not avail themselves of this process, and instead enter the United States without authorization between ports of entry (POEs), generally are subject to removal. As part of this effort, the U.S. Department of Homeland Security (DHS) is implementing a process—modeled on the successful Uniting for Ukraine (U4U) and Process for Venezuelans—for certain Haitian nationals to lawfully enter the United States in a safe and orderly manner and be considered for a case-by-case determination of parole. To be eligible, individuals must have a supporter in the United States who agrees to provide financial support for the duration of the beneficiary's parole period, pass national security and public safety vetting, and fly at their own expense to an interior POE, rather than entering at a land POE. Individuals are ineligible for this process if they have been ordered removed from the United States within the prior five years; have entered unauthorized into the United States between POEs, Mexico, or Panama after the date of this notice's publication with an exception for individuals permitted a single instance of voluntary departure or withdrawal of their application for admission to still maintain their eligibility for this process; or are otherwise deemed not to merit a favorable exercise of discretion.

DATES: DHS will begin using the Form I–134A, Online Request to be a Supporter and Declaration of Financial Support, for this process on January 6, 2023.

FOR FURTHER INFORMATION CONTACT: Daniel Delgado, Acting Director, Border and Immigration Policy, Office of Strategy, Policy, and Plans, Department of Homeland Security, 2707 Martin Luther King Jr. Ave SE, Washington, DC 20528–0445; telephone (202) 447–3459 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background—Haitian Parole Process

This notice describes the implementation of a new parole process for certain Haitian nationals, including the eligibility criteria and filing process. The parole process is intended to enhance border security by responding to and protecting against a significant increase of irregular migration by Haitians to the United States via dangerous routes that pose serious risks to migrants' lives and safety, while also providing a process for certain such nationals to lawfully enter the United States in a safe and orderly manner.

The announcement of this new process followed detailed consideration of a wide range of relevant facts and alternatives, as reflected in the Secretary's decision memorandum dated December 22, 2022.[1] The complete reasons for the Secretary's decision are included in that memorandum. This **Federal Register** notice is intended to provide appropriate context and guidance for the public regarding the policy and relevant procedures associated with this policy.

A. Overview

The U.S. Government is engaged in a multi-pronged, regional strategy to address the challenges posed by irregular migration.[2] This long-term strategy—a shared endeavor with partner nations—focuses on addressing the root causes of migration, which are currently fueling unprecedented levels of irregular migration, and creating safe, orderly, and humane processes for migrants seeking protection throughout the region. This includes domestic efforts to expand immigration processing capacity and multinational collaboration to prosecute migrant-smuggling and human-trafficking criminal organizations as well as their facilitators and money-laundering networks. While this strategy shows great promise, it will take time to fully implement. In the interim, the U.S. government needs to take immediate steps to provide safe, orderly, humane pathways for the large numbers of individuals seeking to enter the United States and to discourage such individuals from taking the dangerous journey to and arriving, without authorization, at the SWB.

In October 2022, DHS undertook a new effort to address the high number of Venezuelans encountered at the SWB.[3] Specifically, DHS provided a new parole process for Venezuelans who are backed by supporters in the United States to come to the United States by flying to interior ports of entry—thus obviating the need for them to make the dangerous journey to the SWB. Meanwhile, the Government of Mexico (GOM) made an independent decision for the first time to accept the returns of Venezuelans who crossed the SWB without authorization pursuant to the Title 42 public health Order, thus imposing a consequence on Venezuelans who sought to come to the SWB rather than avail themselves of the newly announced Parole Process. Within a week of the October 12, 2022 announcement of that process, the number of Venezuelans encountered at the SWB fell from over 1,100 a day to under 200 a day, and as of the week ending December 4, to an average of 86 a day.[4] The new process and accompanying consequence for unauthorized entry also led to a precipitous decline in irregular migration of Venezuelans throughout the Western Hemisphere. The number of Venezuelans attempting to enter Panama through the Darién Gap—an inhospitable jungle that spans between Panama and Colombia—was down from 40,593 in October 2022 to just 668 in November.[5]

[1] *See* Memorandum for the Secretary from the Under Secretary for Strategy, Policy, and Plans, Acting Commissioner of U.S. Customs and Border Protection, and Director of U.S. Citizenship and Immigration Services, Parole Process for Certain Haitian Nationals (Dec. 22, 2022).

[2] In this notice, irregular migration refers to the movement of people into another country without authorization.

[3] Implementation of a Parole Process for Venezuelans, 87 FR 63507 (Oct. 19, 2022).

[4] DHS Office of Immigration Statistics (OIS) analysis of data pulled from CBP Unified Immigration Portal (UIP) December 5, 2022. Data are limited to USBP encounters to exclude those being paroled in through ports of entry.

[5] Servicio Nacional de Migración de Panamá, Irregulares en Tránsito Frontera Panamá-Colombia 2022, *https://www.migracion.gob.pa/images/img2022/PDF/IRREGULARES_%20POR_*

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DHS anticipates that implementing a similar process for Haitians will reduce the number of Haitians seeking to irregularly enter the United States between POEs along the SWB or by sea by coupling a meaningful incentive to seek a safe, orderly means of traveling to the United States with the imposition of consequences for those who seek to enter without authorization pursuant to this process. Only those who meet specified criteria and pass national security and public safety vetting will be eligible for consideration for parole under this process.

Instituting a similar process for Haitians is critical to responding to and protecting against a significant increase of irregular migration by Haitians to the United States via dangerous routes that pose serious risks to migrants' lives and safety. At the end of FY 2021, DHS experienced a focused surge in Haitian migration in the Del Rio sector of the border that strained its capacity to process individuals in a timely manner, necessitating an all-of-government response. In FY 2022, DHS encounters of Haitians at the SWB increased to unprecedented levels, with 48,697 unique encounters, as compared to the annual average of 3,242 unique encounters for FY 2014 to FY 2019.[6] In addition, the number of Haitian nationals entering Panama through the Darién Gap has been steadily increasing in recent months—something that has been a key predictor of migrant movement towards the SWB in the past, including with nationals of Venezuela a few months ago. Haitians represented the third highest nationality encountered in the Darién Gap between January and November 2022, at 16,933 encounters, and the number of Haitian encounters in Panama doubled between September and November 2022.[7]

Haitian migrants are also increasingly taking to the sea in makeshift boats. Maritime migration from Haiti also increased sharply in FY 2022, with a total of 4,025 Haitian nationals interdicted at sea compared to 1,205 in FY 2021 and 398 in FY 2020.[8] While attempted irregular entry of Haitians between POEs has waned since June 2022, DHS assesses that this trend could quickly shift again, given the prevalence of displaced Haitian communities gathered in Mexico and the increasing volume of Haitians traversing the Darién Gap on their way north.

DHS anticipates that instituting a Venezuela-like process for nationals of Haiti will reduce the irregular migration of Haitians in the hemisphere, disincentivize Haitians in northern Mexico from seeking to enter along the SWB of the United States without authorization, and reduce dangerous attempts to travel to the United States by sea. This will be accomplished by coupling a meaningful incentive to seek a safe, orderly means of traveling by air to interior ports of entry in the United States with the imposition of consequences for those who seek to enter without authorization between POEs along the SWB. Individuals can access this lawful process from safe locations in Haiti or in third countries. Only those who meet specified criteria and pass national security and public safety vetting will be eligible for consideration for parole under this process. Implementation of the new parole process for Haitians is contingent on the GOM making an independent decision to accept the return or removal of Haitian nationals who bypass this new process and enter the United States without authorization.

As in the process for Venezuelans, a supporter in the United States must initiate the process on behalf of a Haitian national (and certain non-Haitian nationals who are an immediate family member of a primary beneficiary), and commit to providing the beneficiary financial support, as needed.

In addition to the supporter requirement, Haitian nationals and their immediate family members must meet several eligibility criteria in order to be considered, on a case-by-case basis, for advance travel authorization and parole. Only those who meet all specified criteria are eligible to receive advance authorization to travel to the United States and be considered for a discretionary grant of parole, on a case-by-case basis, under this process. Beneficiaries must pass national security, public safety, and public health vetting prior to receiving a travel authorization, and those who are approved must arrange air travel at their own expense to seek entry at an interior POE.

A grant of parole under this process is for a temporary period of up to two years. During this two-year period, the United States will continue to build on the multi-pronged, long-term strategy with our foreign partners throughout the region to support conditions that would decrease irregular migration, work to improve refugee processing and other immigration pathways in the region. These strategies will support efforts to stabilize conditions in Haiti, thus diminishing the push factors and enabling more regular removals of those Haitians who nonetheless enter the United States or partner nations unauthorized and who lack a valid claim of asylum or other forms of protection. The two-year period will also enable individuals to seek humanitarian relief or other immigration benefits for which they may be eligible, and to work and contribute to the United States. Those who are not granted asylum or any other immigration benefits during this two-year parole period generally will need to depart the United States prior to the expiration of their authorized parole period or will be placed in removal proceedings after the period of parole expires.

The temporary, case-by-case parole of qualifying Haitian nationals pursuant to this process will provide a significant public benefit for the United States by reducing unauthorized entries along our SWB while also addressing the urgent humanitarian reasons that have displaced hundreds of thousands of Haitians throughout the Western Hemisphere, to include concurrent health, economic, and political crises. Most significantly, DHS anticipates this process will: (i) enhance the security of the U.S. SWB by reducing irregular migration of Haitian nationals, including by imposing additional consequences on those who seek to enter between POEs; (ii) improve vetting for national security and public safety; (iii) reduce the strain on DHS personnel and resources; (iv) minimize the domestic impact of irregular migration from Haiti; (v) disincentivize a dangerous irregular journey that puts migrant lives and safety at risk and enriches smuggling networks; and (vi) fulfill important foreign policy goals to manage migration collaboratively in the hemisphere.

The Secretary retains the sole discretion to terminate the process at any point.

B. Conditions at the Border

1. Impact of Venezuela Process

This process is modeled on the Venezuela process—as informed by the way that similar incentive and disincentive structures successfully decreased the number of Venezuelan nationals making the dangerous journey to and being encountered along the

%20DARI%C3%89N_NOVIEMBRE_2022.pdf (last viewed Dec. 11, 2022).

[6] OIS analysis of OIS Persist Dataset based on data through November 30, 2022.

[7] Servicio Nacional de Migración de Panamá, Irregulares en Tránsito Frontera Panamá-Colombia 2022, *https://www.migracion.gob.pa/images/img2022/PDF/IRREGULARES_%20POR_%20DARI%C3%89N_NOVIEMBRE_2022.pdf,* (last viewed Dec. 11, 2022).

[8] OIS analysis of United States Coast Guard (USCG) data provided October, 2022; Maritime Interdiction Data from USCG, October 5, 2022.

SWB. The Venezuela process demonstrates that combining a clear and meaningful consequence for irregular entry along the SWB with a significant incentive for migrants to wait where they are and use a safe, orderly process to come to the United States can change migratory flows. Prior to the October 12, 2022 announcement of the Venezuela process, DHS encountered approximately 1,100 Venezuelan nationals per day between POEs—with peak days exceeding 1,500.[9] Within a week of the announcement, the number of Venezuelans encountered at the SWB fell from over 1,100 per day to under 200 per day, and as of the week ending December 4, an average of 86 per day.[10]

Panama's daily encounters of Venezuelans also declined significantly, falling some 88 percent, from 4,399 on October 16 to 532 by the end of the month—a decline driven entirely by Venezuelan migrants' choosing not to make the dangerous journey through the Darién Gap. The number of Venezuelans attempting to enter Panama through the Darién Gap continued to decline precipitously in November—from 40,593 encounters in October, a daily average of 1,309, to just 668 in November, a daily average of just 22.[11]

The Venezuela process fundamentally changed the calculus for Venezuelan migrants. Venezuelan migrants who had already crossed the Darién Gap have returned to Venezuela by the thousands on voluntary flights organized by the governments of Mexico, Guatemala, and Panama, as well as civil society.[12] Other migrants who were about to enter the Darién Gap have turned around and headed back south.[13] Still others who were intending to migrate north are staying where they are to apply for this parole process.[14] Put simply, the Venezuela process demonstrates that combining a clear and meaningful consequence for irregular entry along the SWB with a significant incentive for migrants to wait where they are and use this parole process to come to the United States can yield a meaningful change in migratory flows.

2. Trends and Flows: Increase of Haitian Nationals Arriving at the Southwest Border

The last decades have yielded a dramatic increase in encounters at the SWB and a dramatic shift in the demographics of those encountered. Throughout the 1980s and into the first decade of the 2000s, encounters along the SWB routinely numbered in the millions per year.[15] By the early 2010s, three decades of investments in border security and strategy contributed to reduced border flows, with border encounters averaging fewer than 400,000 per year from 2011–2017.[16] However, these gains were subsequently reversed as border encounters more than doubled between 2017 and 2019, and—following a steep drop in the first months of the COVID–19 pandemic—continued to increase at a similar pace in 2021 and 2022.[17]

Shifts in demographics have also had a significant effect on migration flows. Border encounters in the 1980s and 1990s consisted overwhelmingly of single adults from Mexico, most of whom were migrating for economic reasons.[18] Beginning in the 2010s, a growing share of migrants have come from Northern Central America [19] (NCA) and, since the late 2010s, from countries throughout the Americas.[20] Migrant populations from these newer source countries have included large numbers of families and children, many of whom are traveling to escape violence, political oppression, and for other non-economic reasons.[21]

C. Trends in Haitian Migration

1. Migration by Land

Since 2019, increasing numbers of Haitians have sought to enter the United States at the land border. In FY 2019, DHS encountered just 3,039 Haitian nationals at the SWB.[22] This number grew to 4,431 unique encounters in FY 2020, and then sharply increased by 881 percent to 43,484 unique encounters in FY 2021.[23]

In September 2021, the U.S. experienced a mass migration event involving approximately 15,000 Haitians crossing into Del Rio, Texas, within a matter of days. The group included many thousands who had left Haiti years before, spent time living and working in countries like Chile and Brazil, and then traveled up to our border through Panama.[24] This led to thousands of Haitian nationals living in a makeshift camp under a bridge in Del Rio and placed immense strain on U.S. government resources that were employed to respond to the event.

Unique encounters of Haitian nationals at the SWB continued to increase in FY 2022 to 48,697, with a peak of 9,753 unique encounters in a single month in May 2022.[25] While encounters of Haitian migrants at our border have declined since June 2022, the Government of Panama, which tracks irregular migration through the Darién Gap, has observed a surge in

[9] OIS analysis of OIS Persist Dataset based on data through October 31, 2022.

[10] Office of Immigration Statistics (OIS) analysis of data pulled from CBP UIP December 5, 2022. Data are limited to USBP encounters to exclude those being paroled in through ports of entry.

[11] Servicio Nacional de Migración de Panamá, Irregulares en Tránsito Frontera Panamá-Colombia 2022, *https://www.migracion.gob.pa/images/img2022/PDF/IRREGULARES_%20POR_%20DARI%C3%89N_NOVIEMBRE_2022.pdf* (last viewed Dec. 11, 2022).

[12] La Prensa Latina Media, *More than 4,000 migrants voluntarily returned to Venezuela from Panama, https://www.laprensalatina.com/more-than-4000-migrants-voluntarily-returned-to-venezuela-from-panama/,* Nov. 9 2022 (last viewed Dec. 8, 2022).

[13] Voice of America, *U.S. Policy Prompts Some Venezuelan Migrants to Change Route, https://www.voanews.com/a/us-policy-prompts-some-venezuelan-migrants-to-change-route/6790996.html,* Oct. 14, 2022 (last viewed Dec. 8, 2022).

[14] Axios, *Biden's new border policy throws Venezuelan migrants into limbo, https://www.axios.com/2022/11/07/biden-venezuela-border-policy-darien-gap,* Nov. 7 2022 (last viewed Dec. 8, 2022).

[15] OIS analysis of historic CBP data.

[16] *Id.*

[17] *Id.*

[18] According to historic OIS Yearbooks of Immigration Statistics, Mexican nationals accounted for 96 to over 99 percent of apprehensions of persons entering without inspection between 1980 and 2000. OIS Yearbook of Immigration Statistics, various years. On Mexican migrants from this era's demographics and economic motivations see Jorge Durand, Douglas S. Massey, and Emilio A. Parrado, ''The New Era of Mexican Migration to the United States,'' *The Journal of American History* Vol. 86, No. 2 (Sept. 1999): 518–536.

[19] Northern Central America refers to El Salvador, Guatemala, and Honduras.

[20] According to OIS analysis of CBP data, Mexican nationals continued to account for 89 percent of total SWB encounters in FY 2010, with Northern Central Americans accounting for 8 percent and all other nationalities for 3 percent. Northern Central Americans' share of total encounters increased to 21 percent by FY 2012 and averaged 46 percent in FY 2014–FY 2019, the last full year before the start of the COVID–19 pandemic. All other countries accounted for an average of 5 percent of total SWB encounters in FY 2010–FY 2013, and for 10 percent of total encounters in FY 2014–FY 2019.

[21] Prior to 2013, the overall share of encounters who were processed for expedited removal and claimed fear averaged less than 2 percent annually. Between 2013 and 2018, the share rose from 8 to 20 percent, before dropping with the surge of family unit encounters in 2019 (most of whom were not placed in expedited removal) and the onset of T42 expulsions in 2020. At the same time, between 2013 and 2021, among those placed in expedited removal, the share making fear claims increased from 16 to 82 percent. OIS analysis of historic CBP and USCIS data and OIS Enforcement Lifecycle through June 30, 2022.

[22] OIS analysis of OIS Persist Dataset based on data through November 30, 2022.

[23] *Id.*

[24] The Texan, *Many Haitian Nationals Came From Chile and Brazil Before Heading to Del Rio,* Oct. 7, 2021, *https://thetexan.news/many-haitian-nationals-came-from-chile-and-brazil-before-heading-to-del-rio/.*

[25] CBP, Nationwide Encounters, *https://www.cbp.gov/newsroom/stats/nationwide-encounters*, (last visited, Dec. 17, 2022; OIS analysis of OIS Persist Dataset based on data through November 30, 2022.

land-based encounters of Haitian nationals migrating north in recent months. Encounters of Haitian nationals in Panama jumped from 1,021 in July 2022, to 2,170 in September, to 4,607 in November.[26]

Those numbers are rising at a time when Haitians are already concentrated in Mexico. UNHCR estimates that there were 62,680 Haitians in Mexico in 2022 and projects that this population will grow to 104,541 in 2023.[27] From October 2021 to October 2022, approximately 55,429 Haitian nationals were granted 12-month temporary humanitarian visitor status in Mexico, the highest of any nationality and almost twice as many as the second-highest nationality.[28] Some Haitians migrating north have sought asylum in Mexico—a number that peaked in 2021—and may be planning to settle there permanently.[29] However, DHS assesses that many thousands of Haitians are waiting in Mexico with the ultimate goal of entering the United States, with many reporting they are waiting until the Centers for Disease Control and Prevention (CDC) Title 42 Order is lifted.

2. Migration by Sea

Increasing numbers of Haitian migrants also continue to attempt migration to the United States via maritime routes, often endangering their own lives in precarious and unseaworthy vessels. Maritime migration from Haiti more than tripled in FY 2022, with a total of 4,025 Haitian nationals interdicted at sea compared to 1,205 in FY 2021 and 398 in FY 2020.[30]

The southeast coastal border sectors also have seen increases in unique encounters of Haitian nationals who arrived in the United States by sea.[31] In FY 2021, those sectors encountered 593 unique Haitian nationals, a 411 percent increase compared to 116 in FY 2020.[32] In FY 2022, unique encounters of Haitian nationals in coastal sectors tripled from FY 2021 to 1,788—composing 31 percent of total unique encounters by USBP in the southeast coastal sectors.[33]

3. Push and Pull Factors

DHS assesses that the high number of Haitian nationals encountered at the land border and interdicted at sea is driven primarily by two key factors: First, the displacement of Haitians throughout the Western Hemisphere caused by years of political, health, and economic crises, as well as the explosion of gang violence in Haiti—exacerbated by events that took place in the summer of 2021—are causing thousands to leave the country. Second, the precarious security situation in Haiti is having an impact on DHS's ability to remove Haitian nationals who do not establish a legal basis to remain in the United States; absent such an ability, more individuals may be willing to take a chance that they can come—and stay.

i. Factors Pushing Migration From Haiti

In recent years, Haiti has experienced a series of events, including natural disasters, economic stagnation, pervasive hunger, gang violence, and political assassinations that have devastated the country. This has led tens of thousands of Haitians to lose hope and attempt to migrate.[34]

On August 14, 2021, a 7.2 magnitude earthquake hit Haiti, killing more than 2,200 people, injuring over 12,000 more, destroying tens of thousands of homes, and crippling Haiti's already fragile infrastructure.[35] Just days later, Tropical Storm Grace hit Haiti, with heavy downpours hampering the continuing rescue efforts for those impacted by the earthquake.[36] Within a month, over 650,000 Haitians required humanitarian assistance, including 260,000 children.[37] The World Bank estimates that the August 2021 earthquake caused damages and losses in excess of more than $1.6 billion, roughly 11 percent of GDP.[38]

Amidst the political, security, and environmental crises, Haiti's economy has collapsed. Even before the events of 2021, Haiti already stood as the poorest country in the Americas and one of the poorest in the world.[39] In 2021, Haiti had a GDP per capita of $1,815, the lowest in the Latin America and the Caribbean region, ranking 170 out of 189 on the UN's Human Development Index.[40] The situation has deteriorated to such a point that the Haitian Government itself, on October 7, 2022, asked for international military assistance to help address the converging crises.[41]

In addition to the economic turmoil the island has confronted, the security situation in Haiti has been problematic for some time. Violence in Haiti reached an inflection point on July 7, 2021, with the assassination of Haitian President Jovenel Moïse.[42] The President's death exacerbated political instability on the island, undermining state institutions and generating a power vacuum that has been occupied by gangs. Between January and June 2022, gangs have carried out approximately 930 killings, 680 injuries, and 680 kidnappings in Port-au-Prince alone, with more than 1,200 kidnappings occurring in 2021, almost twice the number reported in 2020 and five times more than in 2019.[43] This recent surge in gang

[26] Servicio Nacional de Migración de Panamá, Irregulares Por Darien, November 2022.

[27] UNHCR Global Focus, *Mexico,* See countries of origin data for 2022 and 2023, *https://reporting.unhcr.org/mexico?year=2022.*

[28] OIS analysis of *Instituto Nacional de Migracion* data.

[29] Estadísticas Comisión Mexicana de Ayuda a Refugiados, *Mexico Commission for Assistance of Refugee data show that about 6,000 Haitians applied for asylum in Mexico in 2020, 50,000 in 2021, and nearly 16,000 in 2022 (through November), https://www.gob.mx/cms/uploads/attachment/file/783226/Cierre_Noviembre-2022__1-Dic._.pdf,* (last viewed Dec. 17, 2022).

[30] OIS analysis of United States Coast Guard (USCG) data provided October 2022; Maritime Interdiction Data from USCG, October 5, 2022.

[31] Includes Miami, FL; New Orleans, LA; and Ramey, PR sectors where all apprehensions are land apprehensions not maritime.

[32] OIS analysis of OIS Persist Dataset based on data through November 30, 2022.

[33] *Id.*

[34] Diana Roy, Council on Foreign Relations, *Ten Graphics That Explain the U.S. Struggle With Migrant Flows in 2022* (Dec. 1, 2022). *https://www.cfr.org/article/ten-graphics-explain-us-struggle-migrant-flows-2022.*

[35] UNICEF, *Massive earthquake leaves devastation in Haiti: UNICEF and partners are on the ground providing emergency assistance for children and their families, https://www.unicef.org/emergencies/massive-earthquake-devastation-haiti* (last viewed Dec. 12, 2022).

[36] The Washington Post, *Tropical Depression Grace Drenching Haiti Days After Major Earthquake,* Aug. 16, 2021, *https://www.washingtonpost.com/weather/2021/08/16/tropical-depression-grace-haiti-flooding/,* (last viewed Dec. 19, 2022).

[37] UNICEF, *One Month After Haiti Earthquake: 260,000 Children Still Need Humanitarian Assistance,* Sept. 15, 20221, *https://www.unicef.org.uk/press-releases/one-month-after-haiti-earthquake-260000-children-still-need-humanitarian-assistance-unicef/,* (last visited Dec. 19, 2022).

[38] The World Bank, *Haiti Overview,* Updated Nov. 8, 2022, *https://www.worldbank.org/en/country/haiti/overview#:~:text=The%20results%20of%20the%20assessment%20of%20the%20effects,in%20damage%20and%20losses%2C%20or%2011%25%20of%20GDP,* (last visited Dec. 19, 2022).

[39] *Id.*

[40] The Human Development Index (HDI) is a summary measure of average achievement in key dimensions of human development: a long and healthy life, being knowledgeable and have a decent standard of living.

[41] CNN, *Haiti government asks for international military assistance,* Oct. 7, 2022, *https://www.cnn.com/2022/10/07/americas/haiti-international-military-assistance-humanitarian-crisis-intl/index.html* (last viewed Dec. 17, 2022).

[42] Catherine Porter, Michael Crowley, and Constant Méheut, The New York Times, *Haiti's President Assassinated in Nighttime Raid, Shaking a Fragile Nation* (July 7, 2021). *https://www.nytimes.com/2021/07/07/world/americas/haiti-president-assassinated-killed.html.*

[43] *See* International Crisis Group, *New Gang Battle Lines Scar Haiti as Political Deadlock Persists* (July 27, 2022), *https://www.crisisgroup.org/latin-america-caribbean/haiti/new-gang-battle-lines-scar-haiti-political-deadlock-persists;* Office of the High Commissioner for Human Rights, *Sexual violence in Port-au-Prince: A weapon used by gangs to instill*

violence has destroyed infrastructure and caused businesses to close, leaving Haitians struggling to find basic products including food, water, and medicines.[44] Armed clashes with gangs have destroyed water networks, severely restricting access to potable drinking water and further hampering the attempts to control a cholera outbreak that, as of November 15, 2022, had caused 8,146 hospitalizations and 188 deaths.[45]

The situation has deteriorated to such a point that the Haitian Government, on October 7, 2022, asked for international military assistance to help address the converging crises.[46]

Over the past two years, many of the Haitian nationals encountered at our SWB actually left Haiti for opportunities in South America many years before.[47] This Haitian diaspora in South America developed after the January 2010 earthquake in Haiti that killed more than 217,000 and displaced more than 1.5 million people. Many migrated to Brazil, which offered employment opportunities, humanitarian protection, and support from large and growing Haitian diaspora communities.[48] Others migrated to Chile, where Haitian nationals could, until 2020, enter visa-free. As of 2020, there were an estimated 143,000 Haitians living in Brazil and 180,000 in Chile.[49] However, over the past two years, declining economic conditions in Chile and Brazil, which were exacerbated by the COVID–19 pandemic, have led many Haitian migrants to leave those countries to head north.[50]

As noted above, UNHCR estimates 62,680 Haitians were in Mexico in 2022, and projects that this population will grow to 104,541 in 2023.[51] Many thousands more are between Mexico and South America.

ii. Return Limitations

While the Government of Haiti generally accepts repatriations, gang activity and conditions in the country have created significant instability, at times curtailing DHS's ability to repatriate Haitians, either by air or maritime repatriations by sea. For example, in early September 2022, destabilizing events, including gangs seizing control of a key fuel terminal, led to a pause in repatriation flights. The ability of our on-the-ground partners to help receive migrants that provide services for individuals returned to Haiti is evaluated on a day-to-day basis.[52] The ability to conduct returns is tenuous, and not something that can be counted on at scale should large numbers of Haitian nationals once again start crossing our SWB.

The maritime environment is similarly affected by the limitation on returns. Even a temporary inability of DHS to repatriate Haitians interdicted at sea could have a cascading effect on U.S. Government resources. U.S. Coast Guard (USCG) uses its vessels to conduct direct repatriations, yet these have limited capacity to hold migrants; they cannot continue to hold migrants for extended periods of time if repatriations are not possible.

4. Impact on DHS Resources and Operations

i. Impact on DHS Resources

To respond to the increase in encounters along the SWB since FY 2021—an increase that has accelerated in FY 2022, driven in part by the number of Haitian nationals encountered—DHS has taken a series of extraordinary steps. Since FY 2021, DHS has built and now operates 10 soft-sided processing facilities at a cost of $688 million. CBP and ICE detailed a combined 3,770 officers and agents to the SWB to effectively manage this processing surge. In FY 2022, DHS had to utilize its above threshold reprogramming authority to identify approximately $281 million from other divisions in the Department to address SWB needs, to include facilities, transportation, medical care, and personnel costs.

The Federal Emergency Management Agency (FEMA) has spent $260 million in FYs 2021 and 2022 combined on grants to non-governmental (NGO) and state and local entities through the Emergency Food and Shelter Program—Humanitarian (EFSP–H) to assist with the reception and onward travel of migrants arriving at the SWB. This spending is in addition to $1.4 billion in additional FY 2022 appropriations that were designated for SWB enforcement and processing capacities.[53]

ii. Impact on Border Operations

The impact has been particularly acute in certain border sectors. In FY 2021, 81 percent of unique Haitians encountered occurred in the Del Rio sector.[54] In FY 2022, flows shifted disproportionately to the El Paso and Yuma sectors, which accounted for 82 percent of unique encounters in that year, while Del Rio fell to 13 percent.[55] All three sectors remain at risk of operating, or are currently operating, over capacity.[56] In FY 2022, El Paso and Yuma sector encounters increased by 161 percent, a seven-fold increase over the average for FY 2014–FY 2019, in part as a result of the increases in Haitian nationals being encountered there.[57]

The focused increase in encounters within those three sectors is particularly challenging. Yuma and Del Rio sectors are geographically remote, and because—up until the past two years—they have not been a focal point for large numbers of individuals entering irregularly, have limited infrastructure and personnel in place to safely process the elevated encounters that they are seeing. The Yuma Sector is along the Colorado River corridor, which presents additional challenges to migrants, such

fear (Oct. 14, 2022), *https://www.ohchr.org/en/documents/country-reports/sexual-violence-port-au-prince-weapon-used-gangs-instill-fear.* Doctors Without Borders, *Returning to Haiti means death* (Aug. 12, 2022), *https://www.doctorswithoutborders.org/latest/returning-haiti-means-death.*

[44] Office of the High Commissioner for Human Rights, *Press Release: Haiti: Bachelet deeply disturbed by human rights impact of deteriorating security situation in Port-au-Prince* (May 17, 2022), *https://www.ohchr.org/en/press-releases/2022/05/haiti-bachelet-deeply-disturbed-human-rights-impact-deteriorating-security.*

[45] Pan American Health Organization, *Cholera Outbreak in Hispaniola Situation Report #6* (Nov. 17, 2022), *https://www.paho.org/en/documents/cholera-outbreak-hispaniola-2022-situation-report-6.*

[46] CNN, *Haiti government asks for international military assistance,* Oct. 7, 2022, *https://www.cnn.com/2022/10/07/americas/haiti-international-military-assistance-humanitarian-crisis-intl/index.html,* (last viewed Dec. 17, 2022).

[47] Migration Policy Institute, *Haitian Migration through the Americas: A Decade in the Making,* (Sept. 30, 2021), *https://www.migrationpolicy.org/article/haitian-migration-through-americas;* Council on Foreign Relations, *Why Are Haitian Migrants Gathering at the U.S. Border?* October 1, 2021, *https://www.cfr.org/in-brief/why-are-haitian-migrants-gathering-us-border, (last visited Dec. 19, 2022).*

[48] *Id.*

[49] Migration Policy Institute, *Chile's Retooled Migration Law Offers More Restrictions, Less Welcome,* (May 2021), *https://www.migrationportal.org/insight/chiles-retooled-migration-law-offers-more-restrictions-less-welcome/,* (last visited Dec. 19, 2022).

[50] *Id.* Migration Policy Institute.

[51] UNHCR Global Focus, *Mexico,* See countries of origin data for 2022 and 2023, *https://reporting.unhcr.org/mexico?year=2022.*

[52] International Organization for Migration, *IOM condemns violence and looting of humanitarian supplies in Haiti* (Sept. 24, 2022). *https://haiti.iom.int/news/iom-condemns-violence-and-looting-humanitarian-supplies-haiti.*

[53] DHS Memorandum from Alejandro N. Mayorkas, Secretary of Homeland Security, to Interested Parties, *DHS Plan for Southwest Border Security and Preparedness,* Apr. 26, 2022, *https://www.dhs.gov/sites/default/files/2022-04/22_0426_dhs-plan-southwest-border-security-preparedness.pdf.*

[54] OIS analysis of OIS Persist Dataset based on data through November 30, 2022.

[55] *Id.*

[56] OIS analysis of data pulled from CBP UIP December 7, 2022.

[57] *Id.*

as armed robbery, assault by bandits, and drowning, as well as to the U.S. Border Patrol (USBP) agents encountering them. El Paso sector has relatively modern infrastructure for processing noncitizens encountered at the border but is far away from other CBP sectors, which makes it challenging to move individuals for processing elsewhere during surges.

In an effort to decompress sectors that are experiencing surges, DHS deploys lateral transportation, using buses and flights to move noncitizens to other sectors that have additional capacity to process. In November 2022, USBP sectors along the SWB operated a combined 602 decompression bus routes to neighboring sectors and operated 124 lateral decompression flights, redistributing noncitizens to other sectors with additional capacity.[58]

Because DHS assets are finite, using air resources to operate lateral flights reduces DHS's ability to operate international repatriation flights to receiving countries, leaving noncitizens in custody for longer and further taxing DHS resources.

iii. Impact on Maritime Operations

In FY 2022, interdictions of Haitians surged to 4,025, compared to just 824 interdictions at sea in FY 2019.[59] While these numbers are significantly smaller than those encountered at the land border, they are high for the maritime environment where the safety risk is particularly acute.

Responding to this increase requires significant resources. In response to the persistently elevated levels of irregular maritime migration across all southeast vectors, the Director of Homeland Security Task Force-Southeast (HSTF–SE) elevated the operational phase of DHS's maritime mass migration plan (Operation Vigilant Sentry) from Phase 1A (Preparation) to Phase 1B (Prevention).[60] Operation Vigilant Sentry is HSTF–SE's comprehensive, integrated, national operational plan for a rapid, effective, and unified response of federal, state, and local capabilities in response to indicators and/or warnings of a mass migration in the Caribbean.

The shift to Phase 1B triggered the surge of additional DHS resources to support HSTF–SE's Unified Command staff and operational rhythm. Between July 2021 and December 2022, Coast Guard deployed three times the number of large cutters to the South Florida Straits and the Windward Passage, four times the number of patrol boats and twice the number of fixed/rotary-wing aircraft to support maritime domain awareness and interdiction operations in the southeastern maritime approaches to the United States.[61] USCG also added two MH–60 helicopters to respond to increased maritime migration flows in FY 2022.[62] USCG almost doubled its flight hour coverage per month to support migrant interdictions in FY 2022. Increased resource demands translate into increased maintenance on those high demand air and sea assets.

DHS assesses that a reduction in the flow of Haitian nationals arriving at the SWB or taking to sea would reduce pressure on overstretched resources and enable the Department to more quickly process and, as appropriate, return or remove those who do not have a lawful basis to stay.

II. DHS Parole Authority

The Immigration and Nationality Act (INA or Act) provides the Secretary of Homeland Security with the discretionary authority to parole noncitizens ''into the United States temporarily under such reasonable conditions as [the Secretary] may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.'' [63] Parole is not an admission of the individual to the United States, and a parolee remains an ''applicant for admission'' during the period of parole in the United States.[64] DHS sets the duration of the parole based on the purpose for granting the parole request and may impose reasonable conditions on parole.[65] DHS may terminate parole in its discretion at any time.[66] By regulation, parolees may apply for and be granted employment authorization to work lawfully in the United States.[67]

This process will combine a consequence for those who seek to enter the United States irregularly between POEs with a significant incentive for Haitian nationals to remain where they are and use a lawful process to request authorization to travel by air to, and ultimately apply for discretionary grant of parole into, the United States for a period of up to two years.

III. Justification for the Process

As noted above, section 212(d)(5)(A) of the INA confers upon the Secretary of Homeland Security the discretionary authority to parole noncitizens ''into the United States temporarily under such reasonable conditions as [the Secretary] may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.'' [68]

A. Significant Public Benefit

The parole of Haitian nationals and their immediate family members under this process—which imposes new consequences for Haitians who seek to enter the United States irregularly between POEs, while providing an alternative opportunity for eligible Haitian nationals to seek advance authorization to travel to the United States to seek discretionary parole, on a case-by-case basis, in the United States—serves a significant public benefit for several, interrelated reasons. Specifically, we anticipate that the parole of eligible individuals pursuant to this process will: (i) enhance border security through a reduction in irregular migration of Haitian nationals, including by imposing additional consequences on those who seek to enter between POEs; (ii) improve vetting for national security and public safety; (iii) reduce strain on DHS personnel and resources; (iv) minimize the domestic impact of irregular migration from Haiti; (v) provide a disincentive to undergo the dangerous irregular journey that puts migrant lives and safety at risk and enriches smuggling networks; and (vi) fulfill important foreign policy goals to manage migration collaboratively in the hemisphere and, as part of those efforts, to establish additional processing pathways from within the region to discourage irregular migration.

1. Enhance Border Security by Reducing Irregular Migration of Haitian Nationals

As described above, in FY 2022, Haitian nationals made up a significant and growing number of those encountered seeking to cross, unauthorized, into the United States by land or who are intercepted after taking to the sea. While the number of Haitian encounters at our land border have

[58] Data from SBCC, as of December 11, 2022.

[59] OIS analysis of USCG data provided October 2022; Maritime Interdiction Data from USCG, October 5, 2022.

[60] Operation Vigilant Sentry (OVS) Phase 1B, Information Memorandum for the Secretary from RADM Brendon C. McPherson, Director, Homeland Security Task Force—Southeast, August 21, 2022.

[61] *Id.*

[62] Joint DHS and DOD Brief on Mass Maritime Migration, August 2022.

[63] INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A); *see also* 6 U.S.C. 202(4) (charging the Secretary with the responsibility for ''[e]stablishing and administering rules . . . governing . . . parole''). Haitians paroled into the United States through this process are not being paroled as refugees, and instead will be considered for parole on a case-by-case basis for a significant public benefit or urgent humanitarian reasons. This parole process does not, and is not intended to, replace refugee processing.

[64] INA 101(a)(13)(B), 212(d)(5)(A), 8 U.S.C. 1101(a)(13)(B), 1182(d)(5)(A).

[65] *See* 8 CFR 212.5(c).

[66] *See* 8 CFR 212.5(e).

[67] *See* 8 CFR 274a.12(c)(11).

[68] INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A).

decreased in recent months, they could quickly rise again due to the conditions in Haiti, the significant number of Haitians present in Mexico, and the increasing number of Haitians crossing into Panama from South America.

By incentivizing individuals to seek a lawful, orderly means of traveling to the United States, while imposing consequences to irregular migration, DHS assesses that the new parole process will mitigate anticipated future surges of Haitians seeking to cross into the United States without authorization, whether by land or by sea. This expectation is informed by the recently implemented process for Venezuelans and the significant shifts in migratory patterns that took place once the process was initiated. The success to date of the Venezuela process provides compelling evidence that coupling effective disincentives for irregular entry with incentives to travel in a lawful and orderly manner can meaningfully shift migration patterns in the region and to the SWB.

Implementation of the parole process is contingent on the GOM's independent decision to accept the return of Haitian nationals who voluntarily depart the United States, those who voluntarily withdraw their application for admission, and those subject to expedited removal who cannot be removed to Haiti or elsewhere. The ability to effectuate voluntary departures, withdrawals, and removals of Haitian nationals to Mexico will impose a consequence on irregular entry that may not exist should the security situation in Haiti continue to deteriorate to the extent that DHS cannot effectuate sufficient returns in a safe manner.

2. Improve Vetting for National Security and Public Safety

All noncitizens whom DHS encounters at the border undergo thorough vetting against national security and public safety databases during their processing. Individuals who are determined to pose a national security or public safety threat are detained pending removal. That said, there are distinct advantages to being able to vet more individuals before they arrive at the border so that we can stop individuals who could pose threats to national security or public safety even earlier in the process. The Haitian parole process will allow DHS to vet potential beneficiaries for national security and public safety purposes *before* they travel to the United States.

As described below, the vetting will require prospective beneficiaries to upload a live photograph via an app. This will enhance the scope of the pre-travel vetting—thereby enabling DHS to better identify those with criminal records or other disqualifying information of concern and deny them travel before they arrive at our border, representing an improvement over the status quo.

3. Reduce the Burden on DHS Personnel and Resources

By mitigating an anticipated increase in encounters of Haitian nationals along the SWB as well as maritime interdictions, and channeling decreased flows of Haitian nationals to interior POEs, we anticipate the process will relieve some of the forecasted impact increased migratory flows could have on the DHS workforce, resources, and other missions.

In the Caribbean, DHS also has surged significant resources—mostly from USCG—to address the heightened rate of maritime encounters. Providing a safe and orderly alternative path is expected to also reduce the number of Haitians who seek to enter the United States by sea and will allow USCG, in particular, to better balance its other important missions, including its counter-drug smuggling operations, protection of living marine resources, support for shipping navigation, and a range of other critical international engagements.

In addition, permitting Haitian nationals to voluntarily depart or withdraw their application for admission one time and still be considered for parole through the process will reduce the burden on DHS personnel and resources that would otherwise be required to obtain and execute a final order of removal. This includes reducing strain on detention and removal flight capacity, officer resources, and reducing costs associated with detention and monitoring.

4. Minimize the Domestic Impact

Though the Venezuelan process has significantly reduced the encounters of Venezuelan nationals, other migratory flows continue to strain domestic resources, which is felt most acutely by border communities. Recent experience, including the Del Rio incident in August 2021, show that migratory surges can happen suddenly and quickly overwhelm U.S. government and partner resources. Given the number of Haitian migrants currently residing in Mexico, the prospect of another surge cannot be discounted. The Haiti process directly mitigates against such a surge—and the impact it would have on State and local governments and civil society stakeholders—by providing a substantial incentive for Haitians to use a lawful process to fly directly to the United States, and a significant consequence for those who do not.

Generally, since FY 2019, DHS has worked with Congress to make approximately $290 million available through FEMA's EFSP to support NGOs and local governments that provide initial reception for migrants entering through the SWB. These entities have provided services and assistance to Haitian nationals and other noncitizens who have arrived at our border, including by building new administrative structures, finding additional housing facilities, and constructing tent shelters to address the increased need.[69] FEMA funding has supported building significant NGO capacity along the SWB, including a substantial increase in available shelter beds in key locations.

Nevertheless, local communities have reported strain on their ability to provide needed social services. Local officials and NGOs report that the temporary shelters that house migrants are quickly reaching capacity due to the high number of arrivals,[70] and stakeholders in the border region have expressed concern that shelters will eventually reach full bed space capacity and not be able to host any new arrivals.[71] As Haitian nationals are amongst those being conditionally released into communities after being processed along the SWB, this parole process will address these concerns by diverting flows of Haitian nationals into an orderly and lawful process in ways that DHS anticipates will yield a decrease in the numbers arriving at the SWB.

DHS anticipates that this process will help minimize the burden on communities, state and local governments, and NGOs who support the reception and onward travel of arriving migrants at the SWB. Beneficiaries are required to fly at their own expense to an interior POE, rather than arriving at the SWB. They also are only authorized to come to the United States if they have a supporter who has agreed to receive them and provide

[69] CNN, *Washington, DC, Approves Creation of New Agency to Provide Services for Migrants Arriving From Other States* (Sept. 21, 2022), *https://www.cnn.com/2022/09/21/us/washington-dc-migrant-services-office.*

[70] San Antonio Report, *Migrant aid groups stretched thin as city officials seek federal help for expected wave* (Apr. 27, 2022), *https://sanantonioreport.org/migrant-aid-groups-stretched-thin-city-officials-seek-federal-help/.*

[71] KGUN9 Tucson, *Local Migrant Shelter Reaching Max Capacity as it Receives Hundreds per Day* (Sept. 23, 2022), *https://www.kgun9.com/news/local-news/local-migrant-shelter-reaching-max-capacity-as-it-receives-hundreds-per-day.*

basic needs, including housing support. Beneficiaries also are eligible to apply for work authorization, thus enabling them to support themselves.

5. Disincentivize a Dangerous Journey That Puts Migrant Lives and Safety at Risk and Enriches Smuggling Networks

The process, which will incentivize intending migrants to use a safe, orderly, and lawful means to access the United States via commercial air flights, cuts out the smuggling networks. This is critical, because transnational criminal organizations—including the Mexican drug cartels—are increasingly playing a key role in human smuggling, reaping billions of dollars in profit and callously endangering migrants' lives along the way.[72]

In FY 2022, more than 750 migrants died attempting to enter the United States,[73] an estimated 32 percent increase from FY 2021 (568 deaths) and a 195 percent increase from FY 2020 (254 deaths).[74] The approximate number of migrants rescued by CBP in FY 2022 (almost 19,000 rescues)[75] increased 48 percent from FY 2021 (12,857 rescues), and 256 percent from FY 2020 (5,336 rescues).[76] Although exact figures are unknown, experts estimate that about 30 bodies have been taken out of the Rio Grande River each month since March 2022.[77] CBP attributes these rising trends to increasing numbers of migrants, as evidenced by increases in overall U.S. Border Patrol encounters.[78] The increased rates of both migrant deaths and those needing rescue at the SWB demonstrate the perils in the migrant journey.

Meanwhile, these numbers do not account for the countless incidents of death, illness, and exploitation migrants experience during the perilous journey north. These migratory movements are in many cases facilitated by numerous human smuggling organizations, for which the migrants are pawns;[79] the organizations exploit migrants for profit, often bringing them across inhospitable deserts, rugged mountains, and raging rivers, often with small children in tow. Upon reaching the border area, noncitizens seeking to cross into the United States generally pay transnational criminal organizations (TCOs) to coordinate and guide them along the final miles of their journey. Tragically, a significant number of individuals perish along the way. The trailer truck accident that killed 55 migrants in Chiapas, Mexico, in December 2021 and the tragic incident in San Antonio, Texas, on June 27, 2022, in which 53 migrants died of the heat in appalling conditions, are just two examples of many in which TCOs engaged in human smuggling prioritize profit over safety.[80]

Migrants who travel via sea also face perilous conditions, including at the hands of smugglers. Human smugglers continue to use unseaworthy, overcrowded vessels that are piloted by inexperienced mariners. These vessels often lack any safety equipment, including but not limited to: personal flotation devices, radios, maritime global positioning systems, or vessel locator beacons. USCG and interagency consent-based interviews suggest that human-smuggling networks and migrants consider the attempts worth the risk.

The increase in migrants taking to sea, under dangerous conditions, has also led to devastating consequences. In FY 2022, the USCG recorded 107 noncitizen deaths, including presumed dead, as a result of irregular maritime migration. In January 2022, the USCG located a capsized vessel with a survivor clinging to the hull. USCG crews interviewed the survivor who indicated there were 34 others on the vessel who were not in the vicinity of the capsized vessel and survivor.[81] The USCG conducted a multi-day air and surface search for the missing migrants, eventually recovering five deceased migrants, while the others were presumed lost at sea.[82] In November 2022, USCG and CBP rescued over 180 people from an overloaded boat that became disabled off of the Florida Keys.[83] They pulled 18 Haitian migrants out of the sea after they became trapped in ocean currents while trying to swim to shore.[84]

DHS anticipates this process will save lives and undermine the profits and operations of the dangerous TCOs that put migrants' lives at risk for profit because it incentivizes intending migrants to use a safe and orderly means to access the United States via commercial air flights, thus ultimately reducing the demand for smuggling networks to facilitate the dangerous journey.

6. Fulfill Important Foreign Policy Goals To Manage Migration Collaboratively in the Hemisphere

Promoting a safe, orderly, legal, and humane migration strategy throughout the Western Hemisphere has been a top foreign policy priority for the Administration. This is reflected in three policy-setting documents: the U.S. Strategy for Addressing the Root Causes of Migration in Central America (Root Causes Strategy);[85] the Collaborative Migration Management Strategy (CMMS);[86] and the Los Angeles Declaration on Migration and Protection (L.A. Declaration), which was endorsed in June 2022 by 21 countries.[87] The

[72] CBP, Fact Sheet: Counter Human Smuggler Campaign Updated (Oct. 6, 2022), *https://www.dhs.gov/news/2022/10/06/fact-sheet-counter-human-smuggler-campaign-update-dhs-led-effort-makes-5000th.*

[73] CNN, *First on CNN: A Record Number of Migrants Have Died Crossing the US-Mexico Border* (Sept. 7, 2022), *https://www.cnn.com/2022/09/07/politics/us-mexico-border-crossing-deaths/index.html.*

[74] DHS, CBP, *Rescue Beacons and Unidentified Remains: Fiscal Year 2022 Report to Congress.*

[75] CNN, *First on CNN: A Record Number of Migrants Have Died Crossing the US-Mexico Border* (Sept. 7, 2022), *https://www.cnn.com/2022/09/07/politics/us-mexico-border-crossing-deaths/index.html.*

[76] DHS, CBP, *Rescue Beacons and Unidentified Remains: Fiscal Year 2022 Report to Congress.*

[77] The Guardian, *Migrants Risk Death Crossing Treacherous Rio Grande River for 'American Dream'* (Sept. 5, 2022), *https://www.theguardian.com/us-news/2022/sep/05/migrants-risk-death-crossing-treacherous-rio-grande-river-for-american-dream.*

[78] DHS, CBP, *Rescue Beacons and Unidentified Remains: Fiscal Year 2022 Report to Congress.*

[79] DHS Memorandum from Alejandro N. Mayorkas, Secretary of Homeland Security, to Interested Parties, *DHS Plan for Southwest Border Security and Preparedness* (Apr. 26, 2022), *https://www.dhs.gov/sites/default/files/2022-04/22_0426_dhs-plan-southwest-border-security-preparedness.pdf.*

[80] Reuters, *Migrant Truck Crashes in Mexico Killing 54* (Dec. 9, 2021), *https://www.reuters.com/article/uk-usa-immigration-mexico-accident-idUKKBN2IP01R;* Reuters, *The Border's Toll: Migrants Increasingly Die Crossing into U.S. from Mexico* (July 25, 2022), *https://www.reuters.com/article/usa-immigration-border-deaths/the-borders-toll-migrants-increasingly-die-crossing-into-u-s-from-mexico-idUSL4N2Z247X.*

[81] Adriana Gomez Licon, Associated Press, Situation 'dire' as Coast Guard seeks 38 missing off Florida, Jan. 26, 2022, *https://apnews.com/article/florida-capsized-boat-live-updates-f251d7d279b6c1fe064304740c3a3019.*

[82] Adriana Gomez Licon, Associated Press, Coast Guard suspends search for migrants off Florida, Jan. 27, 2022, *https://apnews.com/article/florida-lost-at-sea-79253e1c65cf5708f19a97b6875ae239.*

[83] Ashley Cox, CBS News CW44 Tampa, More than 180 people rescued from overloaded vessel in Florida Keys, Nov. 22, 2022, *https://www.cbsnews.com/tampa/news/more-than-180-people-rescued-from-overloaded-vessel-in-florida-keys/.*

[84] *Id.*

[85] National Security Council, *Root Causes of Migration in Central America* (July 2021), *https://www.whitehouse.gov/wp-content/uploads/2021/07/Root-Causes-Strategy.pdf.*

[86] National Security Council, *Collaborative Migration Management Strategy* (July 2021), *https://www.whitehouse.gov/wp-content/uploads/2021/07/Collaborative-Migration-Management-Strategy.pdf?utm_medium=email&utm_source=govdelivery.*

[87] *Id.;* The White House, *Los Angeles Declaration on Migration and Protection* (LA Declaration) (June 10, 2022) *https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/10/los-angeles-declaration-on-migration-and-protection/.*

CMMS and the L.A. Declaration call for a collaborative and regional approach to migration, wherein countries in the hemisphere commit to implementing programs and processes to stabilize communities hosting migrants or those of high outward-migration; humanely enforce existing laws regarding movements across international boundaries, especially when minors are involved; take actions to stop migrant smuggling by targeting the criminals involved in these activities; and provide increased regular pathways and protections for migrants residing in or transiting through the 21 countries.[88] The L.A. Declaration specifically lays out the goal of collectively ''expand[ing] access to regular pathways for migrants and refugees.'' [89]

In June 2022, the U.S. Government announced the planned resumption of operations under the Haitian Family Reunification Parole (HFRP) program.[90] Approved HFRP beneficiaries enter the United States as parolees but are eligible to apply for lawful permanent residence (LPR) status once their immigrant visas become available. However, the security situation in Haiti makes it virtually impossible to resume the program in a timely manner and with enough resources to process meaningful numbers of beneficiaries. Furthermore, the Department of State temporarily reduced presence in Haiti due to the security situation, hampering its ability to process parents, spouses, and children of U.S. citizens and lawful permanent residents for more than 20,000 beneficiaries with immigrant visas currently available.

While HFRP and other efforts represent important progress for certain Haitians who are the beneficiaries of family-based immigrant petitions, HFRP's narrow eligibility criteria, coupled with the operational challenges posed by the security situation in Haiti and Department of State's limited family-based visa processing, result in modest processing throughput and mean that additional pathways are required to meet the current and acute border security and irregular migration mitigation objective. This new process will help achieve these goals by providing an immediate, temporary, and orderly process for Haitian nationals to lawfully enter the United States while we work to improve conditions in Haiti and expand more permanent lawful immigration pathways in the region, including refugee processing and other lawful pathways into the United States and other Western Hemisphere countries.

The process also will respond to an acute foreign policy need complementary to regional efforts. Many countries in the region are affected by the surge in migration of Haitian nationals, and some are eagerly seeking greater United States action to address these challenging flows. The Dominican Republic, which shares a border with Haiti, hosts thousands of Haitian migrants. Brazil and Chile, which had provided Haitians a legal pathway allowing them to reside there, saw Haitians leaving in very high numbers as a result of declining economic conditions, which were only exacerbated by the COVID–19 pandemic.[91] Peru, Ecuador, and Colombia have observed Haitian migrants who had been residing in South America for some time transiting their countries in order to reach the SWB. Panama has been particularly hard-hit by these migratory flows given its geographic location; additionally, the Darién Gap serves as a bottleneck and also creates a humanitarian challenge for the country as it seeks to provide shelter, medical care, food, and other services to migrants exiting the jungle.[92]

Along with the Venezuelan process, this new process will add to these efforts and enable the United States to lead by example. Such processes are a key mechanism to advance the larger domestic and foreign policy goals of the U.S. Government to promote a safe, orderly, legal, and humane migration strategy throughout our hemisphere. The new process also strengthens the foundation for the United States to press regional partners—many of which are already taking important steps—to undertake additional actions with regards to this population, as part of a regional response. Any effort to meaningfully address the crisis in Haiti will require continued efforts by these and other regional partners.

Importantly, the United States will only implement the new parole process while able to return or remove to Mexico Haitian nationals who enter the United States without authorization across the SWB. The United States' ability to execute this process thus is contingent on the GOM making an independent decision to accept the return or removal of Haitian nationals who bypass this new process and enter the United States without authorization.

For its part, the GOM has made clear its position that, in order to effectively manage the migratory flows that are impacting both countries, the United States needs to provide additional safe, orderly, and lawful processes for migrants who seek to enter the United States. The GOM, as it makes its independent decisions as to its ability to accept returns of third country nationals at the border and its efforts to manage migration within Mexico, is thus closely watching the United States' approach to migration management and whether it is delivering on its plans in this space. Initiating and managing this process—which is dependent on GOM's actions—will require careful, deliberate, and regular assessment of GOM's responses to independent U.S. actions and ongoing, sensitive diplomatic engagements.

As noted above, this process is responsive to the GOM's request that the United States increase lawful pathways for migrants and is also aligned with broader Administration domestic and foreign policy priorities in the region. The process couples a meaningful incentive to seek a lawful, orderly means of traveling to the United States with the imposition of consequences for those who seek to enter irregularly along the SWB. The goal of this process is to reduce the irregular migration of Haitian nationals while the United States, together with partners in the region, works to improve conditions in sending countries and create more lawful immigration and refugee pathways in the region, including to the United States.

B. Urgent Humanitarian Reasons

The case-by-case temporary parole of individuals pursuant to this process also will address the urgent humanitarian needs of many Haitian nationals. As described above, escalating gang violence, the aftermaths of an earthquake, and a cholera outbreak have worsened already concerning political, economic, and social conditions in Haiti.[93] This process provides a safe mechanism for Haitian nationals who

[88] *Id.*

[89] *Id.*

[90] White House, Fact Sheet: The Los Angeles Declaration on Migration and Protection U.S. Government and Foreign Partner Deliverables (June 2022) *https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/10/fact-sheet-the-los-angeles-declaration-on-migration-and-protection-u-s-government-and-foreign-partner-deliverables/.*

[91] Council on Foreign Relations, *Why Are Haitian Migrants Gathering at the U.S. Border?* October 1, 2021, *https://www.cfr.org/in-brief/why-are-haitian-migrants-gathering-us-border,* (last visited Dec. 19, 2022).

[92] Reuters, *Thousands of mostly Haitian Migrants Traverse Panama on Way to United States,* Sept. 26, 2021, *https://www.reuters.com/world/americas/thousands-mostly-haitian-migrants-traverse-panama-way-united-states-2021-09-26/,* (last viewed Dec. 19, 2021).

[93] Congressional Research Service, *Haiti: Political Conflict and U.S. Policy Overview* (Aug. 2, 2022), *https://crsreports.congress.gov/product/pdf/IF/IF12182.*

seek to enter the United States for urgent humanitarian reasons without having to make a dangerous journey by land or sea.

IV. Eligibility

A. Supporters

U.S.-based supporters must initiate the process by filing Form I–134A on behalf of a Haitian national and, if applicable, the national's immediate family members.[80] Supporters may be individuals filing on their own, with other individuals, or on behalf of non-governmental entities or community-based organizations. Supporters are required to provide evidence of income and assets and declare their willingness to provide financial support to the named beneficiary for the length of parole. Supporters are required to undergo vetting to identify potential human trafficking or other concerns. To serve as a supporter under the process, an individual must:

- be a U.S. citizen, national, or lawful permanent resident; hold a lawful status in the United States; or be a parolee or recipient of deferred action or Deferred Enforced Departure;
- pass security and background vetting, including for public safety, national security, human trafficking, and exploitation concerns; and
- demonstrate sufficient financial resources to receive, maintain, and support the intended beneficiary whom they commit to support for the duration of their parole period.

B. Beneficiaries

In order to be eligible to request and ultimately be considered for a discretionary issuance of advance authorization to travel to the United States to seek a discretionary grant of parole at the POE, such individuals must:

- be outside the United States;
- be a national of Haiti or be a non-Haitian immediate family member[81] and traveling with a Haitian principal beneficiary;
- have a U.S.-based supporter who filed a Form I–134A on their behalf that USCIS has vetted and confirmed;
- possess an unexpired passport valid for international travel;
- provide for their own commercial travel to an air U.S. POE and final U.S. destination;
- undergo and pass required national security and public safety vetting;
- comply with all additional requirements, including vaccination requirements and other public health guidelines; and
- demonstrate that a grant of parole is warranted based on significant public benefit or urgent humanitarian reasons, as described above, and that a favorable exercise of discretion is otherwise merited.

A Haitian national is ineligible to be considered for advance authorization to travel to the United States as well as parole under this process if that person is a permanent resident or dual national of any country other than Haiti, or currently holds refugee status in any country, unless DHS operates a similar parole process for the country's nationals.[94]

In addition, a potential beneficiary is ineligible for advance authorization to travel to the United States as well as parole under this process if that person:

- fails to pass national security and public safety vetting or is otherwise deemed not to merit a favorable exercise of discretion;
- has been ordered removed from the United States within the prior five years or is subject to a bar to admissibility based on a prior removal order;[83]
- has crossed irregularly into the United States, between the POEs, after January 9, 2023 except individuals permitted a single instance of voluntary departure pursuant to INA section 240B, 8 U.S.C. 1229c or withdrawal of their application for admission pursuant to INA section 235(a)(4), 8 U.S.C. 1225(a)(4) will remain eligible;
- has irregularly crossed the Mexican or Panamanian border after January 9, 2023; or
- is under 18 and not traveling through this process accompanied by a parent or legal guardian, and as such is a child whom the inspecting officer would determine to be an unaccompanied child.[84]

Travel Requirements: Beneficiaries who receive advance authorization to travel to the United States to seek parole into the United States will be responsible for arranging and funding their own commercial air travel to an interior POE of the United States.

Health Requirements: Beneficiaries must follow all applicable requirements, as determined by DHS's Chief Medical Officer, in consultation with CDC, with respect to health and travel, including vaccination and/or testing requirements for diseases including COVID–19, polio, and measles. The most up-to-date public health requirements applicable to this process will be available at *www.uscis.gov/CHNV.*

[94] This limitation does not apply to immediate family members traveling with a Haitian national.

C. Processing Steps

Step 1: Declaration of Financial Support

A U.S.-based supporter will submit a Form I–134A, Online Request to be a Supporter and Declaration of Financial Support, with USCIS through the online myUSCIS web portal to initiate the process. The Form I–134A identifies and collects information on both the supporter and the beneficiary. The supporter must submit a separate Form I–134A for each beneficiary they are seeking to support, including Haitians' immediate family members and minor children. The supporter will then be vetted by USCIS to protect against exploitation and abuse, and to ensure that the supporter is able to financially support the beneficiary whom they agree to support. Supporters must be vetted and confirmed by USCIS, at USCIS' discretion, before moving forward in the process.

Step 2: Submit Biographic Information

If a supporter is confirmed by USCIS, the listed beneficiary will receive an email from USCIS with instructions to create an online account with myUSCIS and next steps for completing the application. The beneficiary will be required to confirm their biographic information in their online account and attest to meeting the eligibility requirements.

As part of confirming eligibility in their myUSCIS account, individuals who seek authorization to travel to the United States will need to confirm that they meet public health requirements, including certain vaccination requirements.

Step 3: Submit Request in CBP One Mobile Application

After confirming biographic information in myUSCIS and completing required eligibility attestations, the beneficiary will receive instructions through myUSCIS for accessing the CBP One mobile application. The beneficiary must then enter limited biographic information into CBP One and submit a live photo.

Step 4: Approval To Travel to the United States

After completing Step 3, the beneficiary will receive a notice in their myUSCIS account confirming whether CBP has, in CBP's discretion, provided the beneficiary with advance authorization to travel to the United States to seek a discretionary grant of parole on a case-by-case basis. If approved, this authorization is generally valid for 90 days, and beneficiaries are responsible for securing their own travel

via commercial air to an interior POE of the United States.[85] Approval of advance authorization to travel does not guarantee parole into the United States. Whether to parole the individual is a discretionary determination made by CBP at the POE at the time the individual arrives at the interior POE.

All of the steps in this process, including the decision to grant or deny advance travel authorization and the parole decision at the interior POE, are entirely discretionary and not subject to appeal on any grounds.

Step 5: Seeking Parole at the POE

Each individual arriving under this process will be inspected by CBP and considered for a grant of discretionary parole for a period of up to two years on a case-by-case basis.

As part of the inspection, beneficiaries will undergo additional screening and vetting, to include additional fingerprint biometric vetting consistent with CBP inspection processes. Individuals who are determined to pose a national security or public safety threat or otherwise do not warrant parole pursuant to section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A), and as a matter of discretion upon inspection, will be processed under an appropriate processing pathway and may be referred to ICE for detention.

Step 6: Parole

If granted parole pursuant to this process, each individual generally will be paroled into the United States for a period of up to two years, subject to applicable health and vetting requirements, and will be eligible to apply for employment authorization from USCIS under existing regulations. USCIS is leveraging technological and process efficiencies to minimize processing times for requests for employment authorization. All individuals two years of age or older will be required to complete a medical screening for tuberculosis, including an IGRA test, within 90 days of arrival to the United States.

D. Scope, Termination, and No Private Rights

The Secretary retains the sole discretion to terminate the Parole Process for Haitians at any point. The number of travel authorizations granted under this process shall be spread across this process and the separate and independent Parole Process for Cubans, the Parole Process for Nicaraguans, and Parole Process for Venezuelans (as described in separate notices published concurrently in today's edition of the **Federal Register**) and shall not exceed 30,000 each month in the aggregate. Each of these processes operates independently, and any action to terminate or modify any of the other processes will have no bearing on the criteria for or independent decisions with respect to this process.

This process is being implemented as a matter of the Secretary's discretion. It is not intended to and does not create any rights, substantive or procedural, enforceable by any party in any matter, civil or criminal.

V. Regulatory Requirements

A. Administrative Procedure Act

This process is exempt from notice-and-comment rulemaking and delayed effective date requirements on multiple grounds, and is therefore amenable to immediate issuance and implementation.

First, the Department is merely adopting a general statement of policy,[95] *i.e.,* a ''statement[] issued by an agency to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.'' [96] As section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A), provides, parole decisions are made by the Secretary of Homeland Security ''in his discretion.''

Second, even if this process were considered to be a legislative rule that would normally be subject to requirements for notice-and-comment rulemaking and a delayed effective date, the process would be exempt from such requirements because it involves a foreign affairs function of the United States.[97] Courts have held that this exemption applies when the rule in question ''is clearly and directly involved in a foreign affairs function.'' [98] In addition, although the text of the Administrative Procedure Act does not expressly require an agency invoking this exemption to show that such procedures may result in ''definitely undesirable international consequences,'' some courts have required such a showing.[99] This rule satisfies both standards.

As described above, this process is directly responsive to requests from key foreign partners—including the GOM—to provide a lawful process for Haitian nationals to enter the United States. The United States will only implement the new parole process while able to return or remove Haitian nationals who enter the United States without authorization across the SWB. The United States' ability to execute this process is contingent on the GOM making an independent decision to accept the return or removal of Haitian nationals who bypass this new process and enter the United States without authorization. Thus, initiating and managing this process will require careful, deliberate, and regular assessment of the GOM's responses to U.S. action in this regard, and ongoing, sensitive diplomatic engagements.

Delaying issuance and implementation of this process to undertake rulemaking would undermine the foreign policy imperative to act now. It also would complicate broader discussions and negotiations about migration management. For now, the GOM has indicated it is prepared to make an independent decision to accept the return or removal of Haitian nationals. That willingness could be impacted by the delay associated with a public rulemaking process involving advance notice and comment and a delayed effective date. Additionally, making it publicly known that we plan to return or remove nationals of Haiti to Mexico at a future date would likely result in a surge in migration, as migrants rush to the border to enter before the process begins—which would adversely impact each country's border security and further strain their personnel and resources deployed to the border.

Moreover, this process is not only responsive to the interests of key foreign partners—and necessary for addressing migration issues requiring coordination between two or more governments—it is also fully aligned with larger and important foreign policy objectives of this Administration and fits within a web of carefully negotiated actions by multiple governments (for instance in the L.A. Declaration). It is the view of the United States that the implementation of this process would advance the Administration's foreign policy goals by demonstrating U.S. partnership and U.S. commitment to the shared goals of addressing migration through the hemisphere, both of which are essential to maintaining strong bilateral relationships.

The invocation of the foreign affairs exemption here is also consistent with Department precedent. For example, DHS published a notice eliminating an exception to expedited removal for certain Cuban nationals, which explained that the change in policy was consistent with the foreign affairs

[95] 5 U.S.C. 553(b)(A); *id.* 553(d)(2).

[96] *See Lincoln* v. *Vigil,* 508 U.S. 182, 197 (1993) (quoting *Chrysler Corp.* v. *Brown,* 441 U.S. 281, 302 n.31 (1979)).

[97] 5 U.S.C. 553(a)(1).

[98] *Mast Indus.* v. *Regan,* 596 F. Supp. 1567, 1582 (C.I.T. 1984) (cleaned up).

[99] *See, e.g., Rajah* v. *Mukasey,* 544 F.3d 427, 437 (2d Cir. 2008).

exemption because the change was central to ongoing negotiations between the two countries.[100] DHS similarly invoked the foreign affairs exemption more recently, in connection with the Venezuela parole process.[101]

Third, DHS assesses that there is good cause to find that the delay associated with implementing this process through notice-and-comment rulemaking and with a delayed effective date would be contrary to the public interest and impracticable.[102] The numbers of Haitians encountered at the SWB are already high, and a delay would greatly exacerbate an urgent border and national security challenge and would miss a critical opportunity to reduce and divert the flow of irregular migration.[103]

Undertaking notice-and-comment rule making procedures would be contrary to the public interest because an advance announcement of the process would seriously undermine a key goal of the policy: it would incentivize even more irregular migration of Haitian nationals seeking to enter the United States before the process would take effect. There are urgent border and national security and humanitarian interests in reducing and diverting the flow of irregular migration.[104] It has long been recognized that agencies may use the good cause exception, and need not take public comment in advance, where significant public harm would result from the notice-and-comment process.[105] If, for example, advance notice of a coming price increase would immediately produce market dislocations and lead to serious shortages, advance notice need not be given.[106] A number of cases follow this logic in the context of economic regulation.[107]

The same logic applies here, where the Department is responding to exceedingly serious challenges at the border, and advance announcement of that response would significantly increase the incentive, on the part of migrants and others (such as smugglers), to engage in actions that would compound those very challenges. It is well established that migrants may change their behavior in response to perceived imminent changes in U.S. immigration policy.[108] For example, as detailed above, implementation of the parole process for Venezuelans was associated with a drastic reduction in irregular migration by Venezuelans. Had the parole process been announced prior to a notice-and-comment period, it likely would have had the opposite effect, resulting in many hundreds of thousands of Venezuelan nationals attempting to cross the border before the program went into effect. Overall, the Department's experience has been that in some circumstances when public announcements have been made regarding changes in our immigration laws and procedures that would restrict access to immigration benefits to those attempting to enter the United States along the U.S.-Mexico land border, there have been dramatic increases in the numbers of noncitizens who enter or attempt to enter the United States. Smugglers routinely prey on migrants in response to changes in domestic immigration law.

In addition, it would be impracticable to delay issuance of this process in order to undertake such procedures because—as noted above—maintaining the status quo is likely to contribute to more Haitians attempting to enter irregularly either at the SWB or by sea, at a time when DHS has extremely limited options for processing, detaining, or quickly removing such migrants safely and in sufficient numbers. Inaction would unduly impede DHS's ability to fulfill its critical and varied missions. At current rates, a delay of just a few months to conduct notice-and-comment rulemaking would effectively forfeit an opportunity to reduce and divert migrant flows in the near term, harm border security, and potentially result in scores of additional migrant deaths.

The Department's determination here is consistent with past practice in this area. For example, in addition to the Venezuelan process described above, DHS concluded in January 2017 that it was imperative to give immediate effect to a rule designating Cuban nationals arriving by air as eligible for expedited removal because ''pre-promulgation notice and comment would . . . endanger[ ] human life and hav[e] a potential destabilizing effect in the region.'' [109] DHS cited the prospect that ''publication of the rule as a proposed rule, which would signal a significant change in policy while permitting continuation of the exception for Cuban nationals, could lead to a surge in migration of Cuban nationals seeking to travel to and enter the United States during the period between the publication of a proposed and a final rule.'' [110] DHS found that ''[s]uch a surge would threaten national security and public safety by diverting valuable Government resources from counterterrorism and homeland security responsibilities. A surge could also have a destabilizing effect on the region, thus weakening the security of the United States and threatening its international relations.'' [111] DHS concluded that ''a surge could result in significant loss of human life.'' [112]

[100] *See* 82 FR 4902 (Jan. 17, 2017).

[101] *See* 87 FR 63507 (Oct. 19, 2022).

[102] *See* 5 U.S.C. 553(b)(B); *id.* 553(d)(3).

[103] *See Chamber of Commerce of U.S.* v. *SEC.,* 443 F.3d 890, 908 (D.C. Cir. 2006) (''The [''good cause''] exception excuses notice and comment in emergency situations, where delay could result in serious harm, or when the very announcement of a proposed rule itself could be expected to precipitate activity by affected parties that would harm the public welfare.'' (citations omitted)).

[104] *See* 5 U.S.C. 553(b)(B).

[105] *See, e.g., Mack Trucks, Inc.* v. *EPA,* 682 F.3d 87, 94–95 (D.C. Cir. 2012) (noting that the ''good cause'' exception ''is appropriately invoked when the timing and disclosure requirements of the usual procedures would defeat the purpose of the proposal—if, for example, announcement of a proposed rule would enable the sort of financial manipulation the rule sought to prevent [or] in order to prevent the amended rule from being evaded'' (cleaned up)); *DeRieux* v. *Five Smiths, Inc.,* 499 F.2d 1321, 1332 (Temp. Emer. Ct. App. 1975) (''[W]e are satisfied that there was in fact 'good cause' to find that advance notice of the freeze was 'impracticable, unnecessary, or contrary to the public interest' within the meaning of § 553(b)(B). . . . Had advance notice issued, it is apparent that there would have ensued a massive rush to raise prices and conduct 'actual transactions'—or avoid them—before the freeze deadline.'' (cleaned up)).

[106] *See, e.g., Nader* v. *Sawhill,* 514 F.2d 1064, 1068 (Temp. Emer. Ct. App. 1975) (''[W]e think good cause was present in this case based upon [the agency's] concern that the announcement of a price increase at a future date could have resulted in producers withholding crude oil from the market until such time as they could take advantage of the price increase.'').

[107] *See, e.g., Chamber of Commerce of U.S.* v. *S.E.C.,* 443 F.3d 890, 908 (D.C. Cir. 2006) (''The [''good cause''] exception excuses notice and comment in emergency situations, where delay could result in serious harm, or when the very announcement of a proposed rule itself could be expected to precipitate activity by affected parties that would harm the public welfare.'' (citations omitted)); *Mobil Oil Corp.* v. *Dep't of Energy,* 728 F.2d 1477, 1492 (Temp. Emer. Ct. App. 1983) (''On a number of occasions . . . this court has held that, in special circumstances, good cause can exist when the very announcement of a proposed rule itself can be expected to precipitate activity by affected parties that would harm the public welfare.'').

[108] *See, e.g.,* Tech Transparency Project, Inside the World of Misinformation Targeting Migrants on Social Media, *https://www.techtransparencyproject.org/articles/inside-world-misinformation-targeting-migrants-social-media,* July 26, 2022, (last viewed Dec. 6, 2022).

[109] Eliminating Exception to Expedited Removal Authority for Cuban Nationals Arriving by Air, 82 FR 4769, 4770 (Jan. 17, 2017).

[110] *Id.*

[111] *Id.*

[112] *Id.; accord, e.g.,* Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended, 81 FR 5906, 5907 (Feb. 4, 2016) (finding the good cause exception applicable because of similar short-run incentive concerns).

B. Paperwork Reduction Act (PRA)

Under the Paperwork Reduction Act (PRA), 44 U.S.C. chapter 35, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any new reporting requirements they impose. The process announced by this notice requires changes to two collections of information, as follows.

OMB has recently approved a new collection, Form I–134A, Online Request to be a Supporter and Declaration of Financial Support (OMB control number 1615–NEW). This new collection will be used for the Haiti parole process, and is being revised in connection with this notice, including by increasing the burden estimate. To support the efforts described above, DHS has created a new information collection that will be the first step in these parole processes and will not use the paper USCIS Form I–134 for this purpose. U.S.-based supporters will submit USCIS Form I–134A online on behalf of a beneficiary to demonstrate that they can support the beneficiary for the duration of their temporary stay in the United States. USCIS has submitted and OMB has approved a request for emergency authorization of the required changes (under 5 CFR 1320.13) for a period of 6 months. Within the next 90 days, USCIS will immediately begin normal clearance procedures under the PRA.

OMB has previously approved an emergency request under 5 CFR 1320.13 for a revision to an information collection from CBP entitled Advance Travel Authorization (OMB control number 1651–0143). In connection with the implementation of the process described above, CBP is making multiple changes under the PRA's emergency processing procedures at 5 CFR 1320.13, including increasing the burden estimate and adding Haitian nationals as eligible for a DHS established process that necessitates collection of a facial photograph in CBP One™. OMB has approved the emergency request for a period of 6 months. Within the next 90 days, CBP will immediately begin normal clearance procedures under the PRA.

More information about both collections can be viewed at *www.reginfo.gov.*

Alejandro N. Mayorkas,

Secretary of Homeland Security.

[FR Doc. 2023–00255 Filed 1–5–23; 4:15 pm]

BILLING CODE 9110–09–P

DEPARTMENT OF HOMELAND SECURITY

Implementation of a Parole Process for Nicaraguans

ACTION: Notice.

SUMMARY: This notice describes a new effort designed to enhance the security of our Southwest Border (SWB) by reducing the number of encounters of Nicaraguan nationals crossing the border without authorization, as the U.S. Government continues to implement its broader, multi-pronged and regional strategy to address the challenges posed by a surge in migration. Nicaraguans who do not avail themselves of this new process, and instead enter the United States without authorization between ports of entry (POEs), generally are subject to removal—including to third countries, such as Mexico. As part of this effort, the U.S. Department of Homeland Security (DHS) is implementing a process—modeled on the successful Uniting for Ukraine (U4U) and Process for Venezuelans—for certain Nicaraguan nationals to lawfully enter the United States in a safe and orderly manner and be considered for a case-by-case determination of parole. To be eligible, individuals must have a supporter in the United States who agrees to provide financial support for the duration of the beneficiary's parole period, pass national security and public safety vetting, and fly at their own expense to an interior POE, rather than entering at a land POE. Individuals are ineligible for this process if they have been ordered removed from the United States within the prior five years; have entered unauthorized into the United States between POEs, Mexico, or Panama after the date of this notice's publication, with an exception for individuals permitted a single instance of voluntary departure or withdrawal of their application for admission to still maintain their eligibility for this process; or are otherwise deemed not to merit a favorable exercise of discretion.

DATES: DHS will begin using the Form I–134A, Online Request to be a Supporter and Declaration of Financial Support, for this process on January 6, 2023.

FOR FURTHER INFORMATION CONTACT: Daniel Delgado, Acting Director, Border and Immigration Policy, Office of Strategy, Policy, and Plans, Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528–0445; telephone (202) 447–3459 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background—Nicaraguan Parole Process

This notice describes the implementation of a new parole process for certain Nicaraguan nationals, including the eligibility criteria and filing process. The parole process is intended to enhance border security by reducing the record levels of Nicaraguan nationals entering the United States between POEs, while also providing a process for certain such nationals to lawfully enter the United States in a safe and orderly manner.

The announcement of this new process followed detailed consideration of a wide range of relevant facts and alternatives, as reflected in the Secretary's decision memorandum dated December 22, 2022.[1] The complete reasons for the Secretary's decision are included in that memorandum. This **Federal Register** notice is intended to provide appropriate context and guidance for the public regarding the policy and relevant procedures associated with this policy.

A. Overview

The U.S. Government is engaged in a multi-pronged, regional strategy to address the challenges posed by irregular migration.[2] This long-term strategy—a shared endeavor with partner nations—focuses on addressing the root causes of migration, which are currently fueling unprecedented levels of irregular migration, and creating safe, orderly, and humane processes for migrants seeking protection throughout the region. This includes domestic efforts to expand immigration processing capacity and multinational collaboration to prosecute migrant-smuggling and human-trafficking criminal organizations, as well as their facilitators, and money-laundering networks. While this strategy shows great promise, it will take time to fully implement. In the interim, the U.S. government needs to take immediate steps to provide safe, orderly, humane pathways for the large numbers of individuals seeking to enter the United States and to discourage such individuals from taking the dangerous journey to, and arriving without authorization at, the SWB.

[1] *See* Memorandum for the Secretary from the Under Secretary for Strategy, Policy, and Plans, Acting Commissioner of U.S. Customs and Border Protection, and Director of U.S. Citizenship and Immigration Services, Parole Process for Certain Nicaraguan Nationals (Dec. 22, 2022).

[2] In this notice, irregular migration refers to the movement of people into another country without authorization.

Building on the success of the successful Uniting for Ukraine (U4U) process and the Process for Venezuelans, DHS is implementing a similar process to address the increasing number of encounters of Nicaraguan nationals at the SWB, which have reached record levels over the past six months. Similar to Venezuela, Nicaragua has restricted DHS's ability to remove individuals to Nicaragua, which has constrained DHS's ability to respond to this surge.

In October 2022, DHS undertook a new effort to address the high number of Venezuelans encountered at the SWB.[3] Specifically, DHS provided a new parole process for Venezuelans who are backed by supporters in the United States to come to the United States by flying to interior ports of entry—thus obviating the need for them to make the dangerous journey to the SWB. Meanwhile, the Government of Mexico (GOM) for the first time made an independent decision to accept the returns of Venezuelans who crossed the SWB without authorization pursuant to the Title 42 public health Order, thus imposing a consequence on Venezuelans who sought to come to the SWB rather than avail themselves of the newly announced Parole Process. Within a week of the October 12, 2022 announcement of that process, the number of Venezuelans encountered at the SWB fell from over 1,100 per day to under 200 per day, and, as of the week ending December 4, to an average of 86 per day.[4] The new process and accompanying consequence for unauthorized entry also led to a precipitous decline in irregular migration of Venezuelans throughout the Western Hemisphere. The number of Venezuelans attempting to enter Panama through the Darién Gap—an inhospitable jungle that spans between Panama and Colombia—was down from 40,593 in October 2022 to just 668 in November.[5]

DHS anticipates that implementing a similar process for Nicaraguans will reduce the number of Nicaraguans seeking to irregularly enter the United States between POEs along the SWB by coupling a meaningful incentive to seek a safe, orderly means of traveling to the United States with the imposition of consequences for those who seek to enter without authorization pursuant to this process. Only those who meet specified criteria and pass national security and public safety vetting will be eligible for consideration for parole under this process. Implementation of the new parole process for Nicaraguans is contingent on the GOM accepting the return, departure, or removal to Mexico of Nicaraguan nationals seeking to enter the United States without authorization between POEs on the SWB.

As in the process for Venezuelans, a supporter in the United States must initiate the process on behalf of a Nicaraguan national (and certain non-Nicaraguan nationals who are an immediate family member of a primary beneficiary), and commit to providing the beneficiary financial support, as needed.

In addition to the supporter requirement, Nicaraguan nationals and their immediate family members must meet several eligibility criteria in order to be considered, on a case-by-case basis, for advance travel authorization and parole. Only those who meet all specified criteria are eligible to receive advance authorization to travel to the United States and be considered for a discretionary grant of parole, on a case-by-case basis, under this process. Beneficiaries must pass national security, public safety, and public health vetting prior to receiving a travel authorization, and those who are approved must arrange air travel at their own expense to seek entry at an interior POE.

A grant of parole under this process is for a temporary period of up to two years. During this two-year period, the United States will continue to build on the multi-pronged, long-term strategy with our foreign partners throughout the region to support conditions that would decrease irregular migration, work to improve refugee processing and other immigration pathways in the region, and allow for increased removals of Nicaraguans from both the United States and partner nations who continue to migrate irregularly but who lack a valid claim of asylum or other forms of protection. The two-year period will also enable individuals to seek humanitarian relief or other immigration benefits for which they may be eligible, and to work and contribute to the United States. Those who are not granted asylum or any other immigration benefit during this two-year parole period generally will need to depart the United States prior to the expiration of their authorized parole period or will be placed in removal proceedings after the period of parole expires.

The temporary, case-by-case parole of qualifying Nicaraguan nationals pursuant to this process will provide a significant public benefit for the United States by reducing unauthorized entries along our SWB while also addressing the urgent humanitarian reasons that are driving hundreds of thousands of Nicaraguans to flee their home country, to include widespread and violent repression and human rights violations and abuses by the Ortega regime. Most significantly, DHS anticipates this process will: (i) enhance the security of the U.S. SWB by reducing irregular migration of Nicaraguan nationals, including by imposing additional consequences on those who seek to enter between POEs; (ii) enhance border security and national security by vetting individuals prior to their arrival at a U.S. POE; (iii) reduce the strain on DHS personnel and resources; (iv) minimize the domestic impact of irregular migration from Nicaragua; (v) disincentivize a dangerous irregular journey that puts migrant lives and safety at risk and enriches smuggling networks; and (vi) fulfill important foreign policy goals to manage migration collaboratively in the hemisphere.

The Secretary retains the sole discretion to terminate the Nicaragua process at any point.

B. Conditions at the Border

1. Impact of Venezuela Process

This process is modeled on the Venezuela process—as informed by the way that similar incentive and disincentive structures successfully decreased the number of Venezuelan nationals making the dangerous journey to and being encountered along the SWB. The Venezuela process demonstrates that combining a clear and meaningful consequence for irregular entry along the SWB with a significant incentive for migrants to wait where they are and use a safe, orderly process to come to the United States can change migratory flows. Prior to the October 12, 2022 announcement of the Venezuela process, DHS encountered approximately 1,100 Venezuelan nationals per day between POEs—with peak days exceeding 1,500.[6] Within a week of the announcement, the number of Venezuelans encountered at the SWB fell from over 1,100 per day to under

[3] Implementation of a Parole Process for Venezuelans, 87 FR 63507 (Oct. 19, 2022).

[4] DHS Office of Immigration Statistics (OIS) analysis of data pulled from CBP Unified Immigration Portal (UIP) December 5, 2022. Data are limited to USBP encounters to exclude those being paroled in through ports of entry.

[5] Servicio Nacional de Migración de Panamá, Irregulares en Tránsito Frontera Panamá-Colombia 2022, *https://www.migracion.gob.pa/images/img2022/PDF/IRREGULARES_%20POR_%20DARI%C3%89N_NOVIEMBRE_2022.pdf* (last viewed Dec. 11, 2022).

[6] OIS analysis of OIS Persist Dataset based on data through October 31, 2022.

200 per day, and as of the week ending December 4, an average of 86 per day.[7]

Panama's daily encounters of Venezuelans also declined significantly over the same time period, falling some 88 percent, from 4,399 on October 16 to 532 by the end of the month—a decline driven entirely by Venezuelan migrants' choosing not to make the dangerous journey through the Darién Gap. The number of Venezuelans attempting to enter Panama through the Darién Gap continued to decline precipitously in November—from 40,593 encounters in October, a daily average of 1,309, to just 668 in November, a daily average of just 22.[8]

The Venezuela process fundamentally changed the calculus for Venezuelan migrants. Venezuelan migrants who had already crossed the Darién Gap returned to Venezuela by the thousands on voluntary flights organized by the governments of Mexico, Guatemala, and Panama, as well as civil society.[9] Other migrants who were about to enter the Darién Gap turned around and headed back south.[10] Still others who were intending to migrate north are staying where they are to apply for this parole process.[11] Put simply, the Venezuela process demonstrates that combining a clear and meaningful consequence for irregular entry along the SWB with a significant incentive for migrants to wait where they are and use this parole process to come to the United States can yield a meaningful change in migratory flows.

2. Trends and Flows: Increase of Nicaraguan Nationals Arriving at the Southwest Border

The last decades have yielded a dramatic increase in encounters at the SWB and a dramatic shift in the demographics of those encountered. Throughout the 1980s and into the first decade of the 2000s, encounters along the SWB routinely numbered in the millions per year.[12] By the early 2010s, three decades of investments in border security and strategy contributed to reduced border flows, with border encounters averaging fewer than 400,000 per year from 2011–2017.[13] However, these gains were subsequently reversed as border encounters more than doubled between 2017 and 2019, and—following a steep drop in the first months of the COVID–19 pandemic—continued to increase at a similar pace in 2021 and 2022.[14]

Shifts in demographics have also had a significant effect on migration flows. Border encounters in the 1980s and 1990s consisted overwhelmingly of single adults from Mexico, most of whom were migrating for economic reasons.[15] Beginning in the 2010s, a growing share of migrants have come from Northern Central America [16] (NCA) and, since the late 2010s, from countries throughout the Americas.[17] Migrant populations from these newer source countries have included large numbers of families and children, many of whom are traveling to escape violence, political oppression, and for other non-economic reasons.[18]

Historically, Nicaraguans migrated south to Costa Rica, resulting in relatively few Nicaraguan encounters at the SWB. Consistent with this trend, the number of Nicaraguans seeking asylum in Costa Rica has grown rapidly in recent years, putting immense pressure on the country's asylum system, and causing many asylum seekers to wait years for an initial interview.[19] According to United Nations High Commissioner for Refugees (UNHCR), as of February 2022, ''more Nicaraguans are currently seeking protection in Costa Rica than all the refugees and asylum seekers combined, during Central America's civil wars in the 1980s, when Costa Rica was a sanctuary for those fleeing violence.'' [20] The Government of Costa Rica recently announced its intention to regularize the status of more than 200,000 Nicaraguan migrants and asylum seekers providing them with access to jobs and healthcare as part of the process.[21]

Despite Costa Rica's efforts, increasing numbers of Nicaraguans are traveling north to the SWB due to renewed unrest in Nicaragua and the strained asylum system in Costa Rica. As a result, the United States and Mexico saw surges in migration from Nicaragua, with Nicaraguans claiming asylum in Mexico at three times the rate through October 31 of this year than the previous year and with a surge in migration having significantly contributed to the rising number of encounters at the SWB.[22] Unique encounters of Nicaraguan nationals increased throughout fiscal year (FY) 2021, totaling 47,300,[23] and increased further—and sharply—in FY 2022. DHS encountered an estimated 157,400 unique Nicaraguan nationals in FY 2022, which composed nine percent

[7] OIS analysis of data pulled from CBP UIP December 5, 2022. Data are limited to USBP encounters to exclude those being paroled in through ports of entry.

[8] Servicio Nacional de Migración de Panamá, Irregulares en Tránsito Frontera Panamá-Colombia 2022, *https://www.migracion.gob.pa/images/img2022/PDF/IRREGULARES_%20POR_%20DARI%C3%89N_NOVIEMBRE_2022.pdf,* (last viewed Dec. 11, 2022).

[9] La Prensa Latina Media, *More than 4,000 migrants voluntarily returned to Venezuela from Panama, https://www.laprensalatina.com/more-than-4000-migrants-voluntarily-returned-to-venezuela-from-panama/,* Nov. 9 2022 (last viewed Dec. 8, 2022).

[10] Voice of America, *U.S. Policy Prompts Some Venezuelan Migrants to Change Route, https://www.voanews.com/a/us-policy-prompts-some-venezuelan-migrants-to-change-route/6790996.html,* Oct. 14, 2022 (last viewed Dec. 8, 2022).

[11] Axios, *Biden's new border policy throws Venezuelan migrants into limbo, https://www.axios.com/2022/11/07/biden-venezuela-border-policy-darien-gap,* Nov. 7, 2022 (last viewed Dec. 8, 2022).

[12] OIS analysis of historic CBP data.

[13] *Id.*

[14] *Id.*

[15] According to historic OIS Yearbooks of Immigration Statistics, Mexican nationals accounted for 96 to over 99 percent of apprehensions of persons entering without inspection between 1980 and 2000. On Mexican migrants from this era's demographics and economic motivations see Jorge Durand, Douglas S. Massey, and Emilio A. Parrado, ''The New Era of Mexican Migration to the United States,'' *The Journal of American History* Vol. 86, No. 2 (Sept. 1999): 518–536.

[16] Northern Central America refers to El Salvador, Guatemala, and Honduras.

[17] According to OIS analysis of CBP data, Mexican nationals continued to account for 89 percent of total SWB encounters in FY 2010, with Northern Central Americans accounting for 8 percent and all other nationalities for 3 percent. Northern Central Americans' share of total encounters increased to 21 percent by FY 2012 and averaged 46 percent in FY 2014–FY 2019, the last full year before the start of the COVID–19 pandemic. All other countries accounted for an average of 5 percent of total SWB encounters in FY 2010–FY 2013, and for 10 percent of total encounters in FY 2014–FY 2019.

[18] Prior to 2013, the overall share of encounters who were processed for expedited removal and claimed fear averaged less than 2 percent annually. Between 2013 and 2018, the share rose from 8 to 20 percent, before dropping with the surge of family unit encounters in 2019 (most of whom were not placed in expedited removal) and the onset of T42 expulsions in 2020. At the same time, between 2013 and 2021, among those placed in expedited removal, the share making fear claims increased from 16 to 82 percent. OIS analysis of historic CBP and USCIS data and OIS Enforcement Lifecycle through June 30, 2022.

[19] AP News, Fleeing Nicaraguans Strain Costa Rica's Asylum System (Sept. 2, 2022), *https://apnews.com/article/covid-health-elections-presidential-caribbean-52044748d15dbbb6ca706c66cc7459a5.*

[20] UNHCR, 'Sharp rise' in Nicaraguans fleeing to Costa Rica, strains asylum system, *https://news.un.org/en/story/2022/03/1114792,* Mar. 25, 2022 (last viewed Dec. 9, 2022).

[21] Reuters, Costa Rica prepares plan to regularize status of 200,000 mostly Nicaraguan migrants, *https://www.reuters.com/world/americas/costa-rica-prepares-plan-regularize-status-200000-mostly-nicaraguan-migrants-2022-08-10/,* Aug. 10, 2022 (last viewed Dec. 4, 2022).

[22] Boris Cheshirkov, Number of displaced Nicaraguans in Costa Rica doubles in less than a year, *https://www.unhcr.org/news/briefing/2022/3/623d894c4/number-displaced-nicaraguans-costa-rica-doubles-year.html,* Mar. 25, 2022 (last viewed Dec. 7, 2022).

[23] OIS analysis of OIS Persist Dataset based on data through October 31, 2022. Unique encounters include encounters of persons at the Southwest Border who were not previously encountered in the prior 12 months. Throughout this memo unique encounter data are defined to also include OFO parolees and other OFO administrative encounters.

of all unique encounters and was the fourth largest origin group.[24] Between FY 2021 and FY 2022, unique encounters of Nicaraguan nationals rose 232 percent while unique encounters of all other nationalities combined increased just 47 percent.[25] FY 2022 average unique monthly encounters of Nicaraguan nationals at the land border totaled 13,113 as opposed to an average monthly rate of 316 encounters in FYs 2014–2019, a 41-fold increase.[26]

These trends thus far are only accelerating in FY 2023. In October and November of 2022, DHS encountered 51,000 Nicaraguan nationals at the border—nearly one third of the record total of Nicaraguan encounters in FY 2022.[27]

3. Push and Pull Factors

DHS assesses that the high—and rising—number of Nicaraguan nationals encountered at the SWB is driven by two key factors: First, a confluence of political, economic, and humanitarian crises in Nicaragua—exacerbated by the widespread and violent crackdown on democratic freedoms by the Ortega regime and the government's numerous human rights violations against its own population—are causing thousands to leave the country. This situation is compounded by the fact that increasingly sophisticated human smugglers often target migrants in such circumstances to offer them a facilitated opportunity to travel to the United States—at a cost. Second, the United States faces significant limits on the ability to remove Nicaraguan nationals who do not establish a legal basis to remain in the United States to Nicaragua or elsewhere; absent such an ability, more individuals are willing to take a chance that they can come—and stay.

i. Factors Pushing Migration From Nicaragua

Current political, economic, and humanitarian crises in Nicaragua are driving migration of Nicaraguans throughout the hemisphere as well as to our border.[28] As conditions have deteriorated in Nicaragua due to this confluence of factors, the Government of Nicaragua has shown little tolerance for those who openly criticize their regime and moves swiftly to brazenly silence dissent.[29]

Since 2007, Daniel Ortega and his party, the Sandinista National Liberation Front (FSLN), have gradually consolidated control over the country's institutions and society, including by eliminating presidential term limits.[30] Human Rights Watch (HRW) reported in July 2022 that ''[s]ince taking office in 2007, the Ortega administration has dismantled all institutional checks on presidential power, including the judiciary.'' [31] According to the Inter-American Commission on Human Rights (IACHR), this consolidation of power in the executive ''has facilitated Nicaragua's transformation into a police state in which the executive branch has instituted a regime of terror and of suppression of all freedoms. . . supported by the other branches of government.'' [32] The IACHR reported in June 2022 that ''the state's violent response to the social protests that started on April 18, 2018, triggered a serious political, social, and human rights crisis in Nicaragua,'' [33] and that as of late September, ''more than 2,000 organizations of civil society—linked to political parties, academic, and religious spaces—have been cancelled'' since April 2018.[34] Further, HRW reported that the shutting down of non-governmental organizations in Nicaragua ''is part of a much broader effort to silence civil society groups and independent media through a combination of repressive tactics that include abusive legislation, intimidation, harassment, arbitrary detention, and prosecution of human rights defenders and journalists.'' [35]

Since early 2021, the IACHR has observed the escalation of repression by the Nicaraguan government, characterized by a series of state actions leading to the elimination of the opposition's participation in the elections even before they were held.[36] In December 2021, the IACHR expressed its concern ''about the increasing number of people who have been forced to flee Nicaragua and to request international protection in the context of the ongoing serious human rights crisis in the country.'' [37] In August 2022, Ortega had a bishop, five priests, and two seminarians arrested, claiming that the bishop ''persisted in destabilizing and provocative activities.'' [38] Prior to the November 2022 municipalities election, the government closed 200 nongovernmental groups and over 50 media outlets.[39]

Exacerbated by political repression, Nicaragua is one of the poorest countries in Latin America. According to the World Bank, Nicaragua's gross domestic product (GDP) per capita in 2021 was only $2,090.80, the second lowest in the region, above Haiti.[40] According to the World Food Program, almost 30 percent of Nicaraguan families live in poverty in the country, ''over 8 percent struggle in extreme poverty, surviving on less than $1.25 daily,'' and ''17 percent of children aged under five suffer from chronic malnutrition.'' [41] Migrants often seek economic opportunities to be able to support their families that remain in Nicaragua. Remittances from the United

[24] OIS analysis of OIS Persist Dataset based on data through October 31, 2022.

[25] *Id.*

[26] *Id.*

[27] *Id.;* OIS analysis of UIP CBP data pulled on November 28, 2022.

[28] Voice of America, *With Turmoil at Home, More Nicaraguans Flee to the U.S.* (July 29, 2021), *https://www.voanews.com/a/americas_turmoil-home-more-nicaraguans-flee-us/6208907.html.*

[29] Los Angeles Times, *Sandinistas Complete Their Political Domination of Nicaragua Following Local Elections* (Nov. 8, 2022), *https://www.latimes.com/world-nation/story/2022-11-08/sandinistas-complete-political-domination-nicaragua-local-elections.*

[30] Reuters, *Ortega's Path to Run for Fourth Straight Re-election as Nicaraguan President* (Nov. 3, 2021), *https://www.reuters.com/world/americas/ortegas-path-run-fourth-straight-re-election-nicaraguan-president-2021-11-03/.*

[31] Office of the United Nations High Commissioner for Human Rights (OHCHR), *Human Rights Situation in Nicaragua* 2 (Sept. 2, 2022), *https://reliefweb.int/report/nicaragua/human-rights-situation-nicaragua-report-united-nations-high-commissioner-human-rights-ahrc5142-unofficial-english-translation.*

[32] Inter-American Commission On Human Rights, *Nicaragua: Concentration of Power and the Undermining of the Rule of Law,* OEA/Ser.L/V/II, Doc. 288, 65 (Oct. 25, 2021), *https://www.oas.org/en/iachr/reports/pdfs/2021_nicaragua-en.pdf.*

[33] Inter-American Commission On Human Rights, *Annual Report 2021,* Chapter IV.B—Nicaragua, 775, (June 2, 2022), *https://www.oas.org/en/iachr/reports/ia.asp?Year=2021.*

[34] In light of serious allegations regarding the closure of civic spaces in Nicaragua, UN and IACHR Special Rapporteurs urge authorities to comply with their international obligations to respect and guarantee fundamental freedoms, IACHR, Sept. 28, 2022, *https://www.oas.org/en/iachr/expression/showarticle.asp?lID=1&artID=1257.*

[35] Nicaragua: Government Dismantles Civil Society, Human Rights Watch, July 19, 2022, *https://www.hrw.org/news/2022/07/19/nicaragua-government-dismantles-civil-society.*

[36] IACHR, *Annual Report 2021,* Chapter IV.B—Nicaragua, 775 (June 2, 2022), *https://www.oas.org/en/iachr/reports/ia.asp?Year=2021.*

[37] Inter-American Commission On Human Rights, *IACHR Calls for International Solidarity, Urges States to Protect the People Who Have Been Forced to Flee from Nicaragua* (Dec. 20, 2021), *http://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2021/346.asp.*

[38] The Washington Post, *Nicaragua Detains Catholic Bishop in Escalating Crackdown on Dissent* (Aug. 19, 2022), *https://www.washingtonpost.com/world/2022/08/19/nicaragua-bishop-rolando-alvarez-arrest-ortega/.*

[39] Politico, *Sandinistas Complete Their Political Domination of Nicaragua* (Nov. 8, 2022), *https://www.politico.com/news/2022/11/08/nicaragua-sandinistas-ortega-repression-00065603.*

[40] The World Bank, *GDP per Capita (Current U.S. $)—Latin America & Caribbean, Nicaragua, https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=ZJ-NI&most_recent_value_desc=false* (last visited Dec. 6, 2022).

[41] World Food Programme, *Nicaragua, https://www.wfp.org/countries/nicaragua* (last visited: Sept. 26, 2022).

States to Nicaragua from January–September 2022 have surpassed the total remittances sent in all of 2021.[42]

According to the UNHCR, approximately 200,000 Nicaraguans have sought international protection worldwide.[43] More than 100,000 filed asylum applications in 2021; this is a five-fold increase from 2020.[44] Daniel Ortega's repressive policies, coupled with widespread poverty, have pushed thousands of Nicaraguans to seek humanitarian relief in the Western Hemisphere, including increasingly in the United States.[45]

ii. Return Limitations

The Government of Nicaragua is not accepting returns or removals of their nationals at a volume that allows the United States to effectively manage the number of encounters of Nicaraguans by the United States. Additionally, the GOM has generally not allowed returns of Nicaraguan nationals pursuant to Title 42 authorities, or their removal from the United States pursuant to Title 8 authorities.[46] Other countries have similarly refused to accept Title 8 removals of Nicaraguan nationals. As a result, DHS was only able to repatriate a small number of Nicaraguan nationals to Nicaragua in FY 2022.

Moreover, returns alone are not sufficient to reduce and divert irregular flows of Nicaraguans. The United States will combine a consequence for Nicaraguan nationals who seek to enter the United States without authorization at the land border with an incentive to use the safe, orderly process to request authorization to travel by air to, and seek parole to enter, the United States, without making the dangerous journey to the border.

4. Impact on DHS Resources and Operations

To respond to the increase in encounters along the SWB since FY 2021—an increase that has accelerated in FY 2022, driven in part by the number of Nicaraguan nationals encountered—DHS has taken a series of extraordinary steps. Since FY 2021, DHS has built and now operates 10 soft-sided processing facilities at a cost of $688 million. U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) detailed a combined 3,770 officers and agents to the SWB to effectively manage this processing surge. In FY 2022, DHS had to utilize its above threshold reprogramming authority to identify approximately $281 million from other divisions in the Department to address SWB needs, to include facilities, transportation, medical care, and personnel costs.

The Federal Emergency Management Agency (FEMA) has spent $260 million in FYs 2021 and 2022 combined on grants to non-governmental organizations (NGO) and state and local entities through the Emergency Food and Shelter Program—Humanitarian (EFSP–H) to assist with the reception and onward travel of irregular migrants arriving at the SWB. This spending is in addition to $1.4 billion in additional FY 2022 appropriations that were designated for SWB enforcement and processing capacities.[47]

The impact has been particularly acute in certain border sectors. The increased flows of Nicaraguan nationals are disproportionately occurring within the remote Del Rio and Rio Grande Valley sectors, all of which are at risk of operating, or are currently operating, over capacity. In FY 2022, 80 percent of unique encounters of Nicaraguan nationals occurred in these two sectors.[48] There have also been a growing number of encounters in El Paso sector since September 2022. In FY 2023, Del Rio, El Paso, and Rio Grande Valley sectors have accounted for 88 percent of encounters of Nicaraguan nationals.[49] In FY 2022, Del Rio sector encountered almost double (85 percent increase) the number of migrants as compared to FY 2021. Driven in part by the sharp increase in Nicaraguan nationals being encountered in this sector, this was an eighteen-fold increase over the average for FY 2014–FY 2019.[50]

The focused increase in encounters within those three sectors is particularly challenging. Del Rio sector is geographically remote, and because—up until the past two years—it has not been a focal point for large numbers of individuals entering without authorization, has limited infrastructure and personnel in place to safely process the elevated encounters that CBP is now seeing there. The Yuma Sector is along the Colorado River corridor, which presents additional challenges to migrants, such as armed robbery, assault by bandits, and drowning, as well as to the U.S. Border Patrol (USBP) agents encountering them. El Paso sector has relatively modern infrastructure for processing noncitizens encountered at the border but is far away from other CBP sectors, which makes it challenging to move individuals for processing elsewhere during surges.

In an effort to decompress sectors that are experiencing surges, DHS deploys lateral transportation, using buses and flights to move noncitizens to other sectors that have additional capacity to process. In November 2022, U.S. Border Patrol (USBP) sectors along the SWB operated a combined 602 decompression bus routes to neighboring sectors and operated 124 lateral decompression flights, redistributing noncitizens to other sectors with additional capacity.[51]

Because DHS assets are finite, using air resources to operate lateral flights reduces DHS's ability to operate international repatriation flights to receiving countries, leaving noncitizens in custody for longer and further taxing DHS resources. Fewer international repatriation flights in turn exacerbates DHS's inability to return or remove Nicaraguans and other noncitizens in its custody by sending the message that there is no consequence for illegal entry. DHS assesses that a reduction in the flow of Nicaraguan nationals arriving at the SWB would reduce pressure on overstretched resources and enable the Department to more quickly process and, as appropriate, return or remove those who do not have a lawful basis to stay.

II. DHS Parole Authority

The Immigration and Nationality Act (INA or Act) provides the Secretary of Homeland Security with the discretionary authority to parole noncitizens ''into the United States temporarily under such reasonable conditions as [the Secretary] may prescribe only on a case-by-case basis for urgent humanitarian reasons or

[42] Banco Central De Nicaragua, Remesas Por País de Origen, *https://www.bcn.gob.ni/sites/default/files/estadisticas/siec/datos/remesas_origen.htm* (last visited Dec. 6, 2022).

[43] UNHCR USA, Displacement in Central America, *https://www.unhcr.org/en-us/displacement-in-central-america.html.*

[44] UNHCR, 2021 Global Trends Report, June 16, 2022, *https://www.unhcr.org/62a9d1494/global-trends-report-2021.*

[45] OIS analysis of OIS Persist Dataset based on data through October 31, 2022.

[46] There are some limited exceptions to this prohibition, including Nicaraguan nationals that have Mexican family members.

[47] DHS Memorandum from Alejandro N. Mayorkas, Secretary of Homeland Security, to Interested Parties, *DHS Plan for Southwest Border Security and Preparedness* (Apr. 26, 2022), *https://www.dhs.gov/sites/default/files/2022-04/22_0426_dhs-plan-southwest-border-security-preparedness.pdf.*

[48] OIS analysis of OIS Persist Dataset based on data through October 31, 2022.

[49] *Id.,* and CBP UIP data for November 1–27 pulled on November 28, 2022.

[50] OIS analysis of OIS Persist Dataset based on data through October 31, 2022.

[51] Data from SBCC, as of December 11, 2022.

significant public benefit.'' [52] Parole is not an admission of the individual to the United States, and a parolee remains an ''applicant for admission'' during the period of parole in the United States.[53] DHS may set the duration of the parole based on the purpose for granting the parole request and may impose reasonable conditions on parole.[54] Individuals may be granted advance authorization to travel to the United States to seek parole.[55] DHS may terminate parole in its discretion at any time.[56] Individuals who are paroled into the United States generally may apply for and be granted employment authorization.[57]

This process will combine a consequence for those who seek to enter the United States irregularly between POEs with a significant incentive for Nicaraguan nationals to remain where they are and use a lawful process to request authorization to travel by air to, and ultimately apply for a discretionary grant of parole into, the United States for a period of up to two years.

III. Justification for the Process

As noted above, section 212(d)(5)(A) of the INA confers upon the Secretary of Homeland Security the discretionary authority to parole noncitizens ''into the United States temporarily under such reasonable conditions as [the Secretary] may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.'' [58]

A. Significant Public Benefit

The parole of Nicaraguan nationals and their immediate family members under this process—which imposes new consequences for Nicaraguans who seek to enter the United States without authorization between POEs, while providing an alternative opportunity for eligible Nicaraguan nationals and their immediate family members to seek advance authorization to travel to the United States to seek discretionary parole, on a case-by-case basis, in the United States—serves a significant public benefit for several, interrelated reasons. Specifically, we anticipate that the parole of eligible individuals pursuant to this process will: (i) enhance border security through a reduction in irregular migration of Nicaraguan nationals, including by imposing additional consequences on those who seek to enter between POEs; (ii) improve vetting for national security and public safety; (iii) reduce strain on DHS personnel and resources; (iv) minimize the domestic impact of irregular migration from Nicaragua; (v) provide a disincentive to undergo the dangerous journey that puts migrant lives and safety at risk and enriches smuggling networks; and (vi) fulfill important foreign policy goals to manage migration collaboratively in the hemisphere and, as part of those efforts, to establish additional processing pathways from within the region to discourage irregular migration.

1. Enhanced Border Security by Reducing Irregular Migration of Nicaraguan Nationals

As described above, Nicaraguan nationals make up a significant and growing number of those encountered seeking to cross between POEs without authorization. Without additional and more immediate consequences imposed on those who seek to do so, together with a safe and orderly process for Nicaraguans to enter the United States, without making the journey to the SWB, the numbers will continue to grow.

By incentivizing individuals to seek a safe, orderly means of traveling to the United States through the creation of an alternative pathway to the United States, while imposing additional consequences to irregular migration, DHS assesses this process could lead to a meaningful drop in encounters of Nicaraguan individuals along the SWB. This expectation is informed by the recently implemented process for Venezuelans and the significant shifts in migratory patterns that took place once the process was initiated. The success to date of the Venezuela process provides compelling evidence that coupling effective disincentives for irregular entry with incentives for a safe, orderly parole process can meaningfully shift migration patterns in the region and to the SWB.

Implementation of this parole process is contingent on the GOM's acceptance of Nicaraguan nationals who voluntarily depart the United States, those who voluntarily withdraw their application for admission, and those subject to expedited removal who cannot be removed to Nicaragua or another designated country. The ability to effectuate voluntary departures, withdrawals, and removals of Nicaraguan nationals to Mexico will impose a consequence on irregular entry that currently does not exist.

2. Improve Vetting for National Security and Public Safety

All noncitizens whom DHS encounters at the border undergo thorough vetting against national security and public safety databases during their processing. Individuals who are determined to pose a national security or public safety threat are detained pending removal. That said, there are distinct advantages to being able to vet more individuals before they arrive at the border so that we can stop individuals who could pose threats to national security or public safety even earlier in the process. The Nicaraguan parole process will allow DHS to vet potential beneficiaries for national security and public safety purposes *before* they travel to the United States.

As described below, the vetting will require prospective beneficiaries to upload a live photograph via an app. This will enhance the scope of the pre-travel vetting—thereby enabling DHS to better identify those with criminal records or other disqualifying information of concern and deny authorization to travel under this process before they arrive at our border, representing an improvement over the status quo.

3. Reduce the Burden on DHS Personnel and Resources

By reducing encounters of Nicaraguan nationals at the SWB, and channeling decreased flows of Nicaraguan nationals to interior POEs, we anticipate that the process will relieve some of the impact increased migratory flows have had on the DHS workforce along the SWB. This process is expected to free up resources, including those focused on decompression of border sectors, which in turn may enable an increase in removal flights—allowing for the removal of more noncitizens with final orders of removal faster and reducing the number of days migrants are in DHS custody. While the process will also draw on DHS resources within U.S. Citizenship and Immigration Services (USCIS) and CBP to process requests for discretionary parole on a case-by-case basis and conduct vetting, these requirements involve different parts of DHS and require fewer resources as compared to the status quo.

In addition, permitting Nicaraguans to voluntarily depart or withdraw their application for admission one time and still be considered for parole through the process also will reduce the burden

[52] INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A); *see also* 6 U.S.C. 202(4) (charging the Secretary with the responsibility for ''[e]stablishing and administering rules . . . governing . . . parole''). Nicaraguans paroled into the United States through this process are not being paroled as refugees, and instead will be considered for parole on a case-by-case basis for a significant public benefit or urgent humanitarian reasons. This parole process does not, and is not intended to, replace refugee processing.

[53] INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A).

[54] *Id.*

[55] *See* 8 CFR 212.5(f).

[56] *See* 8 CFR 212.5(e).

[57] *See* 8 CFR 274a.12(c)(11).

[58] INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A).

on DHS personnel and resources that would otherwise be required to obtain and execute a final order of removal. This includes reducing strain on detention and removal flight capacity, officer resources, and reducing costs associated with detention and monitoring.

4. Minimize the Domestic Impact

Though the Venezuelan process has significantly reduced the encounters of Venezuelan nationals, other migratory flows continue to strain domestic resources, which is felt most acutely by border communities. Given the inability to remove, return, or repatriate Nicaraguan nationals in substantial numbers, DHS is currently conditionally releasing 96 percent of the Nicaraguan nationals it encounters at the border, pending their removal proceedings or the initiation of such proceedings, and Nicaraguan nationals accounted for 18 percent of all encounters released at the border in October 2022.[59] The increased volume of provisional releases of Nicaraguan nationals puts strains on U.S. border communities.

Generally, since FY 2019, DHS has worked with Congress to make approximately $290 million available through FEMA's EFSP to support NGOs and local governments that provide initial reception for migrants entering through the SWB. These entities have engaged to provide services and assistance to Nicaraguan nationals and other noncitizens who have arrived at our border, including by building new administrative structures, finding additional housing facilities, and constructing tent shelters to address the increased need.[60] FEMA funding has supported building significant NGO capacity along the SWB, including a substantial increase in available shelter beds in key locations.

Nevertheless, local communities have reported strain on their ability to provide needed social services. Local officials and NGOs report that the temporary shelters that house migrants are quickly reaching capacity due to the high number of arrivals,[61] and stakeholders in the border region have expressed concern that shelters will eventually reach full bed space capacity and not be able to host any new arrivals.[62] Since Nicaraguan nationals account for a significant percentage of the individuals being conditionally released into communities after being processed along the SWB, this parole process will address these concerns by diverting flows of Nicaraguan nationals into a safe and orderly process in ways that DHS anticipates will yield a decrease in the numbers arriving at the SWB.

DHS anticipates that this process will help minimize the burden on communities, state and local governments, and NGOs who support the reception and onward travel of arriving migrants at the SWB. Beneficiaries are required to fly at their own expense to an interior POE, rather than arriving at the SWB. They also are only authorized to come to the United States if they have a supporter who has agreed to receive them and provide basic needs, including housing support. Beneficiaries also are eligible to apply for work authorization, thus enabling them to support themselves.

5. Disincentivize a Dangerous Journey That Puts Migrant Lives and Safety at Risk and Enriches Smuggling Networks

The process, which will incentivize intending migrants to use a safe, orderly, and lawful means to access the United States via commercial air flights, cuts out the smuggling networks. This is critical, because transnational criminal organizations—including the Mexican drug cartels—are increasingly playing a key role in human smuggling, reaping billions of dollars in profit and callously endangering migrants' lives along the way.[63]

In FY 2022, more than 750 migrants died attempting to enter the United States across the SWB,[64] an estimated 32 percent increase from FY 2021 (568 deaths) and a 195 percent increase from FY 2020 (254 deaths).[65] The approximate number of migrants rescued by CBP in FY 2022 (almost 19,000 rescues)[66] increased 48 percent from FY 2021 (12,857 rescues), and 256 percent from FY 2020 (5,336 rescues).[67] Although exact figures are unknown, experts estimate that about 30 bodies have been taken out of the Rio Grande River each month since March 2022.[68] CBP attributes these rising trends to increasing numbers of migrants, as evidenced by increases in overall U.S. Border Patrol encounters.[69] The increased rates of both migrant deaths and those needing rescue at the SWB demonstrate the perils in the migrant journey.

Meanwhile, these numbers do not account for the countless incidents of death, illness, and exploitation migrants experience during the perilous journey north. These migratory movements are in many cases facilitated by numerous human smuggling organizations, for which the migrants are pawns;[70] the organizations exploit migrants for profit, often bringing them across inhospitable deserts, rugged mountains, and raging rivers, often with small children in tow. Upon reaching the border area, noncitizens seeking to cross into the United States generally pay transnational criminal organizations (TCOs) to coordinate and guide them along the final miles of their journey.[71] Tragically, a significant number of individuals perish along the way. The trailer truck accident that killed 55 migrants in Chiapas, Mexico, in December 2021 and the tragic incident in San Antonio, Texas, on June 27, 2022, in which 53 migrants died of the heat in appalling conditions, are just two examples of many in which TCOs

[59] OIS analysis of and CBP subject-level data and OIS Persist Dataset based on data through October 31, 2022.

[60] CNN, *Washington, DC, Approves Creation of New Agency to Provide Services for Migrants Arriving From Other States* (Sept. 21, 2022), *https://www.cnn.com/2022/09/21/us/washington-dc-migrant-services-office.*

[61] San Antonio Report, *Migrant aid groups stretched thin as city officials seek federal help for expected wave* (Apr. 27, 2022), *https://sanantonioreport.org/migrant-aid-groups-stretched-thin-city-officials-seek-federal-help/.*

[62] KGUN9 Tucson, *Local Migrant Shelter Reaching Max Capacity as it Receives Hundreds per Day* (Sept. 23, 2022), *https://www.kgun9.com/news/local-news/local-migrant-shelter-reaching-max-capacity-as-it-receives-hundreds-per-day.*

[63] CBP, Fact Sheet: Counter Human Smuggler Campaign Updated (Oct. 6, 2022), *https://www.dhs.gov/news/2022/10/06/fact-sheet-counter-human-smuggler-campaign-update-dhs-led-effort-makes-5000th.*

[64] CNN, *First on CNN: A Record Number of Migrants Have Died Crossing the U.S.-Mexico Border* (Sept. 7, 2022), *https://www.cnn.com/2022/09/07/politics/us-mexico-border-crossing-deaths/index.html.*

[65] Department of Homeland Security, U.S. Customs and Border Protection, *Rescue Beacons and Unidentified Remains: Fiscal Year 2022 Report to Congress.*

[66] CNN, *First on CNN: A Record Number of Migrants Have Died Crossing the U.S.-Mexico Border* (Sept. 7, 2022), *https://www.cnn.com/2022/09/07/politics/us-mexico-border-crossing-deaths/index.html.*

[67] Department of Homeland Security, U.S. Customs and Border Protection, *Rescue Beacons and Unidentified Remains: Fiscal Year 2022 Report to Congress.*

[68] The Guardian, *Migrants Risk Death Crossing Treacherous Rio Grande River for 'American Dream'* (Sept. 5, 2022), *https://www.theguardian.com/us-news/2022/sep/05/migrants-risk-death-crossing-treacherous-rio-grande-river-for-american-dream.*

[69] Department of Homeland Security, U.S. Customs and Border Protection, *Rescue Beacons and Unidentified Remains: Fiscal Year 2022 Report to Congress.*

[70] DHS Memorandum from Alejandro N. Mayorkas, Secretary of Homeland Security, to Interested Parties, *DHS Plan for Southwest Border Security and Preparedness* (Apr. 26, 2022), *https://www.dhs.gov/sites/default/files/2022-04/22_0426_dhs-plan-southwest-border-security-preparedness.pdf.*

[71] New York Times, *Smuggling Migrants at the Border Now a Billion-Dollar Business,* (July 25, 2022), *https://www.nytimes.com/2022/07/25/us/migrant-smuggling-evolution.html.*

engaged in human smuggling prioritize profit over safety.[72]

DHS anticipates this process will save lives and undermine the profits and operations of the dangerous TCOs that put migrants' lives at risk for profit because it incentivizes intending migrants to use a safe and orderly means to access the United States via commercial air flights, thus ultimately reducing the demand for smuggling networks to facilitate the dangerous journey to the SWB. By reducing the demand for these services, DHS is effectively targeting the resources of TCOs and human smuggling networks that so often facilitate these unprecedented movements with utter disregard for the health and safety of migrants. DHS and federal partners have taken extraordinary measures—including the largest-ever surge of resources against human smuggling networks—to combat and disrupt the TCOs and smugglers and will continue to do so.[73]

6. Fulfill Important Foreign Policy Goals To Manage Migration Collaboratively in the Hemisphere

Promoting a safe, orderly, legal, and humane migration strategy throughout the Western Hemisphere has been a top foreign policy priority for the Administration. This is reflected in three policy-setting documents: the U.S. Strategy for Addressing the Root Causes of Migration in Central America (Root Causes Strategy);[74] the Collaborative Migration Management Strategy (CMMS);[75] and the Los Angeles Declaration on Migration and Protection (L.A. Declaration), which was endorsed in June 2022 by 21 countries.[76] The CMMS and the L.A. Declaration call for a collaborative and regional approach to migration, wherein countries in the hemisphere commit to implementing programs and processes to stabilize communities hosting migrants or those of high outward-migration; humanely enforce existing laws regarding movements across international boundaries, especially when minors are involved; take actions to stop migrant smuggling by targeting the criminals involved in these activities; and provide increased regular pathways and protections for migrants residing in or transiting through the 21 countries.[77] The L.A. Declaration specifically lays out the goal of collectively ''expand[ing] access to regular pathways for migrants and refugees.''[78]

This new process helps achieve these goals by providing an immediate and temporary orderly process for Nicaraguan nationals to lawfully enter the United States while we work to improve conditions in sending countries and expand more permanent lawful immigration pathways in the region, including refugee processing and other lawful pathways into the United States and other Western Hemisphere countries. It thus provides the United States another avenue to lead by example.

The process also responds to an acute foreign policy need. Key allies in the region—including specifically the Governments of Mexico and Costa Rica—are affected by the increased movement of Nicaraguan nationals and have been seeking greater U.S. action to address these challenging flows for some time. These Nicaraguan flows contribute to strain on governmental and civil society resources in Mexican border communities in both the south and the north—something that key foreign government partners have been urging the United States to address.

Along with the Venezuelan process, this new process adds to these efforts and enables the United States to lead by example. Such processes are a key mechanism to advance the larger domestic and foreign policy goals of the U.S. Government to promote a safe, orderly, legal, and humane migration strategy throughout our hemisphere. The new process also strengthens the foundation for the United States to press regional partners—many of which are already taking important steps—to undertake additional actions with regard to this population, as part of a regional response. Any effort to meaningfully address the crisis in Nicaragua will require continued efforts by these and other regional partners.

Importantly, the United States will only implement the new parole process while able to remove or return to Mexico Nicaraguan nationals who enter the United States without authorization across the SWB. The United States' ability to execute this process thus is contingent on the GOM making an independent decision to accept the return or removal of Nicaraguan nationals who bypass this new process and enter the United States without authorization.

For its part, the GOM has made clear its position that, in order to effectively manage the migratory flows that are impacting both countries, the United States needs to provide additional safe, orderly, and lawful processes for migrants who seek to enter the United States. The GOM, as it makes its independent decisions as to its ability to accept returns of third country nationals at the border and its efforts to manage migration within Mexico, is thus closely watching the United States' approach to migration management and whether it is delivering on its plans in this space. Initiating and managing this process—which is dependent on GOM's actions—will require careful, deliberate, and regular assessment of GOM's responses to independent U.S. actions and ongoing, sensitive diplomatic engagements.

As noted above, this process is responsive to the GOM's request that the United States increase lawful pathways for migrants and is also aligned with broader Administration domestic and foreign policy priorities in the region. The process couples a meaningful incentive to seek a lawful, orderly means of traveling to the United States with the imposition of consequences for those who seek to enter without authorization along the SWB. The goal of this process is to reduce the irregular migration of Nicaraguan nationals while the United States, together with partners in the region, works to improve conditions in sending countries and create more lawful immigration and refugee pathways in the region, including to the United States.

B. Urgent Humanitarian Reasons

The case-by-case temporary parole of individuals pursuant to this process will address the urgent humanitarian needs of Nicaraguan nationals who have fled the Ortega regime and Nicaragua. The Government of Nicaragua continues to repress and punish all forms of dissent and public criticism of the regime and has continued to take actions against

[72] Reuters, *Migrant Truck Crashes in Mexico Killing 54* (Dec. 9, 2021), *https://www.reuters.com/article/uk-usa-immigration-mexico-accident-idUKKBN2IP01R;* Reuters, *The Border's Toll: Migrants Increasingly Die Crossing into U.S. from Mexico* (July 25, 2022), *https://www.reuters.com/article/usa-immigration-border-deaths/the-borders-toll-migrants-increasingly-die-crossing-into-u-s-from-mexico-idUSL4N2Z247X.*

[73] *See* DHS Update on Southwest Border Security and Preparedness Ahead of Court-Ordered Lifting of Title 42 (Dec. 13, 2022), *https://www.dhs.gov/publication/update-southwest-border-security-and-preparedness-ahead-court-ordered-lifting-title-42.*

[74] National Security Council, *Root Causes of Migration in Central America* (July 2021), *https://www.whitehouse.gov/wp-content/uploads/2021/07/Root-Causes-Strategy.pdf.*

[75] National Security Council, *Collaborative Migration Management Strategy* (July 2021), *https://www.whitehouse.gov/wp-content/uploads/2021/07/Collaborative-Migration-Management-Strategy.pdf?utm_medium=email&utm_source=govdelivery.*

[76] *Id.;* The White House, *Los Angeles Declaration on Migration and Protection* (LA Declaration) (June 10, 2022) *https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/10/los-angeles-declaration-on-migration-and-protection/.*

[77] *Id.*

[78] *Id.*

those who oppose its positions.[79] This process provides a safe mechanism for Nicaraguan nationals who seek to leave their home country to enter the United States without having to make the dangerous journey to the United States.

IV. Eligibility To Participate in the Process and Processing Steps

A. Supporters

U.S.-based supporters must initiate the process by filing Form I–134A on behalf of a Nicaraguan national and, if applicable, the national's immediate family members.[80] Supporters may be individuals filing on their own, with other individuals, or on behalf of non-governmental entities or community-based organizations. Supporters are required to provide evidence of income and assets and declare their willingness to provide financial support to the named beneficiary for the length of parole. Supporters are required to undergo vetting to identify potential human trafficking or other concerns. To serve as a supporter under the process, an individual must:

- be a U.S. citizen, national, or lawful permanent resident; hold a lawful status in the United States; or be a parolee or recipient of deferred action or Deferred Enforced Departure;
- pass security and background vetting, including for public safety, national security, human trafficking, and exploitation concerns; and
- demonstrate sufficient financial resources to receive, maintain, and support the intended beneficiary whom they commit to support for the duration of their parole period.

B. Beneficiaries

In order to be eligible to request and ultimately be considered for a discretionary issuance of advance authorization to travel to the United States to seek a discretionary grant of parole at the POE, such individuals must:

- be outside the United States;
- be a national of Nicaragua or be a non-Nicaraguan immediate family member[81] and traveling with a Nicaraguan principal beneficiary;
- have a U.S.-based supporter who filed a Form I–134A on their behalf that USCIS has vetted and confirmed;
- possess an unexpired passport valid for international travel;
- provide for their own commercial travel to an air U.S. POE and final U.S. destination;
- undergo and pass required national security and public safety vetting;
- comply with all additional requirements, including vaccination requirements and other public health guidelines; and
- demonstrate that a grant of parole is warranted based on significant public benefit or urgent humanitarian reasons, as described above, and that a favorable exercise of discretion is otherwise merited.

A Nicaraguan national is ineligible to be considered for advance authorization to travel to the United States as well as parole under this process if that person is a permanent resident or dual national of any country other than Nicaragua, or currently holds refugee status in any country, unless DHS operates a similar parole process for the country's nationals.[82]

In addition, a potential beneficiary is ineligible for advance authorization to travel to the United States as well as parole under this process if that person:

- fails to pass national security and public safety vetting or is otherwise deemed not to merit a favorable exercise of discretion;
- has been ordered removed from the United States within the prior five years or is subject to a bar to admissibility based on a prior removal order;[83]
- has crossed irregularly into the United States, between the POEs, after January 9, 2023 except individuals permitted a single instance of voluntary departure pursuant to INA section 240B, 8 U.S.C. 1229c or withdrawal of their application for admission pursuant to INA section 235(a)(4), 8 U.S.C. 1225(a)(4) will remain eligible;
- has irregularly crossed the Mexican or Panamanian border after January 9, 2023; or
- is under 18 and not traveling through this process accompanied by a parent or legal guardian, and as such is a child whom the inspecting officer would determine to be an unaccompanied child.[84]

Travel Requirements: Beneficiaries who receive advance authorization to travel to the United States to seek parole into the United States will be responsible for arranging and funding their own commercial air travel to an interior POE of the United States.

Health Requirements: Beneficiaries must follow all applicable requirements, as determined by DHS's Chief Medical Officer, in consultation with the Centers for Disease Control and Prevention, with respect to health and travel, including vaccination and/or testing requirements for diseases including COVID–19, polio, and measles. The most up-to-date public health requirements applicable to this process will be available at *www.uscis.gov/CHNV.*

C. Processing Steps

Step 1: Declaration of Financial Support

A U.S.-based supporter will submit a Form I–134A, Online Request to be a Supporter and Declaration of Financial Support, with USCIS through the online myUSCIS web portal to initiate the process. The Form I–134A identifies and collects information on both the supporter and the beneficiary. The supporter must submit a separate Form I–134A for each beneficiary they are seeking to support, including Nicaraguans' immediate family members and minor children. The supporter will then be vetted by USCIS to protect against exploitation and abuse, and to ensure that the supporter is able to financially support the beneficiary whom they agree to support. Supporters must be vetted and confirmed by USCIS, at USCIS' discretion, before moving forward in the process.

Step 2: Submit Biographic Information

If a supporter is confirmed by USCIS, the listed beneficiary will receive an email from USCIS with instructions to create an online account with myUSCIS and next steps for completing the application. The beneficiary will be required to confirm their biographic information in their online account and attest to meeting the eligibility requirements.

As part of confirming eligibility in their myUSCIS account, individuals who seek authorization to travel to the United States will need to confirm that they meet public health requirements, including certain vaccination requirements.

Step 3: Submit Request in CBP One Mobile Application

After confirming biographic information in myUSCIS and

[79] OHCHR, Presentation of Report on the Human Rights Situation in Nicaragua, Human Rights Council Resolution 49/3 (Sept. 13, 2022), *https://www.ohchr.org/en/speeches/2022/09/presentation-report-human-rights-situation-nicaragua.*

[80] Certain non-Nicaraguans may use this process if they are an immediate family member of a Nicaraguan beneficiary and traveling with that Nicaraguan beneficiary. For purposes of this process, immediate family members are limited to a spouse, common-law partner, and/or unmarried child(ren) under the age of 21.

[81] See preceding footnote.

[82] This limitation does not apply to immediate family members traveling with a Nicaraguan national.

[83] *See, e.g.,* INA sec. 212(a)(9)(A), 8 U.S.C. 1182(a)(9)(A).

[84] As defined in 6 U.S.C. 279(g)(2). Children under the age of 18 must be traveling to the United States in the care and custody of their parent or legal guardian to be considered for parole at the POE under the process.

completing required eligibility attestations, the beneficiary will receive instructions through myUSCIS for accessing the CBP One mobile application. The beneficiary must then enter limited biographic information into CBP One and submit a live photo.

Step 4: Approval to Travel to the United States

After completing Step 3, the beneficiary will receive a notice in their myUSCIS account confirming whether CBP has, in CBP's discretion, provided the beneficiary with advance authorization to travel to the United States to seek a discretionary grant of parole on a case-by-case basis. If approved, this authorization is generally valid for 90 days, and beneficiaries are responsible for securing their own travel via commercial air to the United States.[85] Approval of advance authorization to travel does not guarantee parole into the United States. Whether to parole the individual is a discretionary determination made by CBP at the POE at the time the individual arrives at the interior POE.

All of the steps in this process, including the decision to grant or deny advance travel authorization and the parole decision at the interior POE, are entirely discretionary and not subject to appeal on any grounds.

Step 5: Seeking Parole at the POE

Each individual arriving at a POE under this process will be inspected by CBP and considered for a grant of discretionary parole for a period of up to two years on a case-by-case basis.

As part of the inspection, beneficiaries will undergo additional screening and vetting, to include additional fingerprint biometric vetting consistent with CBP inspection processes. Individuals who are determined to pose a national security or public safety threat or otherwise do not warrant parole pursuant to section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A), and as a matter of discretion upon inspection, will be processed under an appropriate processing pathway and may be referred to ICE for detention.

Step 6: Parole

If granted parole pursuant to this process, each individual generally will be paroled into the United States for a period of up to two years, subject to applicable health and vetting requirements, and will be eligible to apply for employment authorization from USCIS under existing regulations. USCIS is leveraging technological and process efficiencies to minimize processing times for requests for employment authorization. All individuals two years of age or older will be required to complete a medical screening for tuberculosis, including an IGRA test, within 90 days of arrival to the United States.

D. Scope, Termination, and No Private Rights

The Secretary retains the sole discretion to terminate the process at any point.The number of travel authorizations granted under the Parole Process for Nicaraguans shall be spread across this process and the separate and independent Parole Process for Cubans, the Parole Process for Haitians, and Parole Process for Venezuelans (as described in separate notices published concurrently in today's edition of the **Federal Register**) and shall not exceed 30,000 each month in the aggregate. Each of these processes operates independently, and any action to terminate or modify any of the other processes will have no bearing on the criteria for or independent decisions with respect to this process.

This process is being implemented as a matter of the Secretary's discretion. It is not intended to and does not create any rights, substantive or procedural, enforceable by any party in any matter, civil or criminal.

V. Regulatory Requirements

A. Administrative Procedure Act

This process is exempt from notice-and-comment rulemaking and delayed effective date requirements on multiple grounds, and is therefore amenable to immediate issuance and implementation.

First, the Department is merely adopting a general statement of policy,[86] *i.e.,* a ''statement[ ] issued by an agency to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.'' [87] As section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A), provides, parole decisions are made by the Secretary of Homeland Security ''in his discretion.''

Second, even if this process were considered to be a legislative rule that would normally be subject to requirements for notice-and-comment rulemaking and a delayed effective date, the process would be exempt from such requirements because it involves a foreign affairs function of the United States.[88] Courts have held that this exemption applies when the rule in question ''is clearly and directly involved in a foreign affairs function.'' [89] In addition, although the text of the Administrative Procedure Act does not expressly require an agency invoking this exemption to show that such procedures may result in ''definitely undesirable international consequences,'' some courts have required such a showing.[90] This process satisfies both standards.

As described above, this process is directly responsive to requests from key foreign partners—including the GOM—to provide a lawful process for Nicaraguan nationals to enter the United States. The United States will only implement the new parole process while able to return or remove to Mexico Nicaraguan nationals who enter without authorization across the SWB. The United States' ability to execute this process is contingent on the GOM making an independent decision to accept the return or removal of Nicaraguan nationals who bypass this new process and enter the United States without authorization. Thus, initiating and managing this process will require careful, deliberate, and regular assessment of the GOM's responses to U.S. action in this regard, and ongoing, sensitive diplomatic engagements.

Delaying issuance and implementation of this process to undertake rulemaking would undermine the foreign policy imperative to act now. It also would complicate broader discussions and negotiations about migration management. For now, the GOM has indicated it is prepared to make an independent decision to accept the return or removal of Nicaraguan nationals. The GOM's willingness to accept the returns or removals could be impacted by the delay associated with a public rulemaking process involving advance notice and comment and a delayed effective date. Additionally, making it publicly known that we plan to return or remove nationals of Nicaragua to Mexico at a future date would likely result in an even greater surge in migration, as migrants rush to the border to enter before the process begins—which would adversely impact each country's border security and

[85] Air carriers can validate an approved and valid travel authorization submission using the same mechanisms that are currently in place to validate that a traveler has a valid visa or other documentation to facilitate issuance of a boarding pass for air travel.

[86] 5 U.S.C. 553(b)(A); *id.* 553(d)(2).

[87] *See Lincoln* v. *Vigil,* 508 U.S. 182, 197 (1993) (quoting *Chrysler Corp.* v. *Brown,* 441 U.S. 281, 302 n.31 (1979)).

[88] 5 U.S.C. 553(a)(1).

[89] *Mast Indus.* v. *Regan,* 596 F. Supp. 1567, 1582 (C.I.T. 1984) (cleaned up).

[90] *See, e.g., Rajah* v. *Mukasey,* 544 F.3d 427, 437 (2d Cir. 2008).

further strain their personnel and resources deployed to the border.

Moreover, this process is not only responsive to the interests of key foreign partners—and necessary for addressing migration issues requiring coordination between two or more governments—it is also fully aligned with larger and important foreign policy objectives of this Administration and fits within a web of carefully negotiated actions by multiple governments (for instance in the L.A. Declaration). It is the view of the United States that the implementation of this process will advance the Administration's foreign policy goals by demonstrating U.S. partnership and U.S. commitment to the shared goals of addressing migration through the hemisphere, both of which are essential to maintaining strong bilateral relationships.

The invocation of the foreign affairs exemption here is also consistent with Department precedent. For example, DHS published a notice eliminating an exception to expedited removal for certain Cuban nationals, which explained that the change in policy was consistent with the foreign affairs exemption because the change was central to ongoing negotiations between the two countries.[91] DHS similarly invoked the foreign affairs exemption more recently, in connection with the Venezuela parole process.[92]

Third, DHS assesses that there is good cause to find that the delay associated with implementing this process through notice-and-comment rulemaking and with a delayed effective date would be contrary to the public interest and impracticable.[93] The numbers of Nicaraguans encountered at the SWB are already high, and a delay would greatly exacerbate an urgent border and national security challenge and would miss a critical opportunity to reduce and divert the flow of irregular migration.[94]

Undertaking notice-and-comment rule making procedures would be contrary to the public interest because an advance announcement of the process would seriously undermine a key goal of the policy: it would incentivize even more irregular migration of Nicaraguan nationals seeking to enter the United States before the process would take effect. There are urgent border and national security and humanitarian interests in reducing and diverting the flow of irregular migration.[95] It has long been recognized that agencies may use the good cause exception, and need not take public comment in advance, where significant public harm would result from the notice-and-comment process.[96] If, for example, advance notice of a coming price increase would immediately produce market dislocations and lead to serious shortages, advance notice need not be given.[97] A number of cases follow this logic in the context of economic regulation.[98]

The same logic applies here, where the Department is responding to exceedingly serious challenges at the border, and advance announcement of that response would significantly increase the incentive, on the part of migrants and others (such as smugglers), to engage in actions that would compound those very challenges. It is well established that migrants may change their behavior in response to perceived imminent changes in U.S. immigration policy.[99] For example, as detailed above, implementation of the parole process for Venezuelans was associated with a drastic reduction in irregular migration by Venezuelans. Had the parole process been announced prior to a notice-and-comment period, it likely would have had the opposite effect, resulting in many hundreds of thousands of Venezuelan nationals attempting to cross the border before the program went into effect. Overall, the Department's experience has been that in some circumstances when public announcements have been made regarding changes in our immigration laws and procedures that would restrict access to immigration benefits to those attempting to enter the United States along the U.S.-Mexico land border, there have been dramatic increases in the numbers of noncitizens who enter or attempt to enter the United States. Smugglers routinely prey on migrants in response to changes in domestic immigration law.

In addition, it would be impracticable to delay issuance of this process in order to undertake such procedures because—as noted above—maintaining the status quo, which involves record numbers of Nicaraguan nationals currently being encountered attempting to enter without authorization at the SWB, coupled with DHS's extremely limited options for processing, detaining, or quickly removing such migrants, would unduly impede DHS's ability to fulfill its critical and varied missions. At current rates, a delay of just a few months to conduct notice-and-comment rulemaking would effectively forfeit an opportunity to reduce and divert migrant flows in the near term, harm border security, and potentially result in scores of additional migrant deaths.

The Department's determination here is consistent with past practice in this area. For example, in addition to the Venezuelan process described above, DHS concluded in January 2017 that it was imperative to give immediate effect to a rule designating Cuban nationals arriving by air as eligible for expedited removal because ''pre-promulgation notice and comment would . . . endanger[ ] human life and hav[e] a potential destabilizing effect in the region.'' [100] DHS cited the prospect that ''publication of the rule as a proposed rule, which would signal a significant change in policy while permitting

[91] *See* 82 FR 4902 (Jan. 17, 2017).

[92] *See* 87 FR 63507 (Oct. 19, 2022).

[93] *See* 5 U.S.C. 553(b)(B); *id.* 553(d)(3).

[94] *See Chamber of Commerce of U.S.* v. *SEC,* 443 F.3d 890, 908 (D.C. Cir. 2006) (''The [''good cause''] exception excuses notice and comment in emergency situations, where delay could result in serious harm, or when the very announcement of a proposed rule itself could be expected to precipitate activity by affected parties that would harm the public welfare.'' (citations omitted)).

[95] *See* 5 U.S.C. 553(b)(B).

[96] *See, e.g., Mack Trucks, Inc.* v. *EPA,* 682 F.3d 87, 94–95 (D.C. Cir. 2012) (noting that the ''good cause'' exception ''is appropriately invoked when the timing and disclosure requirements of the usual procedures would defeat the purpose of the proposal—if, for example, announcement of a proposed rule would enable the sort of financial manipulation the rule sought to prevent [or] in order to prevent the amended rule from being evaded'' (cleaned up)); *DeRieux* v. *Five Smiths, Inc.,* 499 F.2d 1321, 1332 (Temp. Emer. Ct. App. 1975) (''[W]e are satisfied that there was in fact 'good cause' to find that advance notice of the freeze was 'impracticable, unnecessary, or contrary to the public interest' within the meaning of section 553(b)(B). . . . Had advance notice issued, it is apparent that there would have ensued a massive rush to raise prices and conduct 'actual transactions'—or avoid them—before the freeze deadline.'' (cleaned up)).

[97] *See, e.g., Nader* v. *Sawhill,* 514 F.2d 1064, 1068 (Temp. Emer. Ct. App. 1975) (''[W]e think good cause was present in this case based upon [the agency's] concern that the announcement of a price increase at a future date could have resulted in producers withholding crude oil from the market until such time as they could take advantage of the price increase.'').

[98] *See, e.g., Chamber of Commerce of U.S.* v. *SEC.,* 443 F.3d 890, 908 (D.C. Cir. 2006) (''The [''good cause''] exception excuses notice and comment in emergency situations, where delay could result in serious harm, or when the very announcement of a proposed rule itself could be expected to precipitate activity by affected parties that would harm the public welfare.'' (citations omitted)); *Mobil Oil Corp.* v. *Dep't of Energy,* 728 F.2d 1477, 1492 (Temp. Emer. Ct. App. 1983) (''On a number of occasions . . . this court has held that, in special circumstances, good cause can exist when the very announcement of a proposed rule itself can be expected to precipitate activity by affected parties that would harm the public welfare.'').

[99] *See, e.g.,* Tech Transparency Project, Inside the World of Misinformation Targeting Migrants on Social Media, *https://www.techtransparencyproject.org/articles/inside-world-misinformation-targeting-migrants-social-media,* July 26, 2022 (last viewed Dec. 6, 2022).

[100] Eliminating Exception to Expedited Removal Authority for Cuban Nationals Arriving by Air, 82 FR 4769, 4770 (Jan. 17, 2017).

continuation of the exception for Cuban nationals, could lead to a surge in migration of Cuban nationals seeking to travel to and enter the United States during the period between the publication of a proposed and a final rule.'' [101] DHS found that ''[s]uch a surge would threaten national security and public safety by diverting valuable Government resources from counterterrorism and homeland security responsibilities. A surge could also have a destabilizing effect on the region, thus weakening the security of the United States and threatening its international relations.'' [102] DHS concluded that ''a surge could result in significant loss of human life.'' [103]

B. Paperwork Reduction Act (PRA)

Under the Paperwork Reduction Act (PRA), 44 U.S.C. chapter 35, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any new reporting requirements they impose. The process announced by this notice requires changes to two collections of information, as follows.

OMB has recently approved a new collection, Form I–134A, Online Request to be a Supporter and Declaration of Financial Support (OMB control number 1615–NEW). This new collection will be used for the Nicaragua parole process, and is being revised in connection with this notice, including by increasing the burden estimate. To support the efforts described above, DHS has created a new information collection that will be the first step in these parole processes and will not use the paper USCIS Form I–134 for this purpose. U.S.-based supporters will submit USCIS Form I–134A online on behalf of a beneficiary to demonstrate that they can support the beneficiary for the duration of their temporary stay in the United States. USCIS has submitted and OMB has approved a request for emergency authorization of the required changes (under 5 CFR 1320.13) for a period of 6 months. Within the next 90 days, USCIS will immediately begin normal clearance procedures under the PRA.

OMB has previously approved an emergency request under 5 CFR 1320.13 for a revision to an information collection from CBP entitled Advance Travel Authorization (OMB control number 1651–0143). In connection with the implementation of the process described above, CBP is making multiple changes under the PRA's emergency processing procedures at 5 CFR 1320.13, including increasing the burden estimate and adding Nicaraguan nationals as eligible for a DHS established process that necessitates collection of a facial photograph in CBP One™. OMB has approved the emergency request for a period of 6 months. Within the next 90 days, CBP will immediately begin normal clearance procedures under the PRA.

More information about both collections can be viewed at *www.reginfo.gov.*

Alejandro N. Mayorkas,

Secretary of Homeland Security.

[FR Doc. 2023–00254 Filed 1–5–23; 4:15 pm]

BILLING CODE 9110–9M–P

[101] *Id.*

[102] *Id.*

[103] *Id.; accord, e.g.,* Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended, 81 FR 5906, 5907 (Feb. 4, 2016) (finding the good cause exception applicable because of similar short-run incentive concerns).

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4679–DR; Docket ID FEMA–2022–0001]

West Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–4679–DR), dated November 28, 2022, and related determinations.

DATES: The declaration was issued November 28, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 28, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of West Virginia resulting from severe storms, flooding, landslides, and mudslides during the period of August 14 to August 15, 2022, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Jeffrey L. Jones, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of West Virginia have been designated as adversely affected by this major disaster:

Fayette County for Public Assistance.

All areas within the State of West Virginia are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–00178 Filed 1–6–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Implementation of a Parole Process for Cubans

ACTION: Notice.

SUMMARY: This notice describes a new effort designed to enhance the security

of our Southwest Border (SWB) by reducing the number of encounters of Cuban nationals crossing the border without authorization, as the U.S. Government continues to implement its broader, multi-pronged and regional strategy to address the challenges posed by a surge in migration. Cubans who do not avail themselves of this new process, and instead enter the United States without authorization between ports of entry (POEs), generally are subject to removal—including to third countries, such as Mexico. As part of this effort, the U.S. Department of Homeland Security (DHS) is implementing a process—modeled on the successful Uniting for Ukraine (U4U) and Process for Venezuelans—for certain Cuban nationals to lawfully enter the United States in a safe and orderly manner and be considered for a case-by-case determination of parole. To be eligible, individuals must have a supporter in the United States who agrees to provide financial support for the duration of the beneficiary's parole period, pass national security and public safety vetting, and fly at their own expense to an interior POE, rather than entering at a land POE. Individuals are ineligible for this process if they have been ordered removed from the United States within the prior five years; have entered unauthorized into the United States between POEs, Mexico, or Panama after the date of this notice's publication, with an exception for individuals permitted a single instance of voluntary departure or withdrawal of their application for admission to still maintain their eligibility for this process; or are otherwise deemed not to merit a favorable exercise of discretion.

DATES: DHS will begin using the Form I–134A, Online Request to be a Supporter and Declaration of Financial Support, for this process on January 6, 2023.

FOR FURTHER INFORMATION CONTACT: Daniel Delgado, Acting Director, Border and Immigration Policy, Office of Strategy, Policy, and Plans, Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528–0445; telephone (202) 447–3459 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background—Cuban Parole Process

This notice describes the implementation of a new parole process for certain Cuban nationals, including the eligibility criteria and filing process. The parole process is intended to enhance border security by reducing the record levels of Cuban nationals entering the United States between POEs, while also providing a process for certain such nationals to lawfully enter the United States in a safe and orderly manner.

The announcement of this new process followed detailed consideration of a wide range of relevant facts and alternatives, as reflected in the Secretary's decision memorandum dated December 22, 2022.[1] The complete reasons for the Secretary's decision are included in that memorandum. This **Federal Register** notice is intended to provide appropriate context and guidance for the public regarding the policy and relevant procedures associated with this policy.

A. Overview

The U.S. Government is engaged in a multi-pronged, regional strategy to address the challenges posed by irregular migration.[2] This long-term strategy—a shared endeavor with partner nations—focuses on addressing the root causes of migration, which are currently fueling unprecedented levels of irregular migration, and creating safe, orderly, and humane processes for migrants seeking protection throughout the region. This includes domestic efforts to expand immigration processing capacity and multinational collaboration to prosecute migrant-smuggling and human-trafficking criminal organizations as well as their facilitators and money-laundering networks. While this strategy shows great promise, it will take time to fully implement. In the interim, the U.S. government needs to take immediate steps to provide safe, orderly, humane pathways for the large numbers of individuals seeking to enter the United States and to discourage such individuals from taking the dangerous journey to and arriving, without authorization, at the SWB.

Building on the success of the Uniting for Ukraine (U4U) process and the Process for Venezuelans, DHS is implementing a similar process to address the increasing number of encounters of Cuban nationals at the SWB and at sea, which have reached record levels over the past six months. Similar to Venezuela, Cuba has restricted DHS's ability to remove individuals to Cuba, which has constrained the Department's ability to respond to this surge.

In October 2022, DHS undertook a new effort to address the high number of Venezuelans encountered at the SWB.[3] Specifically, DHS provided a new parole process for Venezuelans who are backed by supporters in the United States to come to the United States by flying to interior ports of entry—thus obviating the need for them to make the dangerous journey to the SWB. Meanwhile, the Government of Mexico (GOM) made an independent decision for the first time to accept the returns of Venezuelans who crossed the SWB without authorization pursuant to the Title 42 public health Order, thus imposing a consequence on Venezuelans who sought to come to the SWB rather than avail themselves of the newly announced Parole Process. Within a week of the October 12, 2022 announcement of that process, the number of Venezuelans encountered at the SWB fell from over 1,100 per day to under 200 per day, and as of the week ending December 4, to an average of 86 per day.[4] The new process and accompanying consequence for unauthorized entry also led to a precipitous decline in irregular migration of Venezuelans throughout the Western Hemisphere. The number of Venezuelans attempting to enter Panama through the Darién Gap—an inhospitable jungle that spans between Panama and Colombia—was down from 40,593 in October 2022 to just 668 in November.[5]

DHS anticipates that implementing a similar process for Cubans will reduce the number of Cubans seeking to irregularly enter the United States between POEs along the SWB or by sea by coupling a meaningful incentive to seek a safe, orderly means of traveling to the United States with the imposition of consequences for those who seek to enter without authorization pursuant to this process. Only those who meet specified criteria and pass national security and public safety vetting will be eligible for consideration for parole under this process. Implementation of the new parole process for Cubans is

[1] *See* Memorandum for the Secretary from the Under Secretary for Strategy, Policy, and Plans, Acting Commissioner of U.S. Customs and Border Protection, and Director of U.S. Citizenship and Immigration Services, Parole Process for Certain Cuban Nationals (Dec. 22, 2022).

[2] In this notice, irregular migration refers to the movement of people into another country without authorization.

[3] Implementation of a Parole Process for Venezuelans, 87 FR 63507 (Oct. 19, 2022).

[4] DHS Office of Immigration Statistics (OIS) analysis of data pulled from CBP Unified Immigration Portal (UIP) December 5, 2022. Data are limited to USBP encounters to exclude those being paroled in through ports of entry.

[5] Servicio Nacional de Migración de Panamá, Irregulares en Tránsito Frontera Panamá-Colombia 2022, *https://www.migracion.gob.pa/images/img2022/PDF/IRREGULARES_%20POR_%20DARI%C3%89N_NOVIEMBRE_2022.pdf* (last viewed Dec. 11, 2022).

contingent on the GOM accepting the return, departure, or removal to Mexico of Cuban nationals seeking to enter the United States without authorization between POEs on the SWB.

As in the process for Venezuelans, a supporter in the United States must initiate the process on behalf of a Cuban national (and certain non-Cuban nationals who are an immediate family member of a primary beneficiary), and commit to providing the beneficiary financial support, as needed.

In addition to the supporter requirement, Cuban nationals and their immediate family members must meet several eligibility criteria in order to be considered, on a case-by-case basis, for advance travel authorization and parole. Only those who meet all specified criteria are eligible to receive advance authorization to travel to the United States and be considered for a discretionary grant of parole, on a case-by-case basis, under this process. Beneficiaries must pass national security, public safety, and public health vetting prior to receiving a travel authorization, and those who are approved must arrange air travel at their own expense to seek entry at an interior POE.

A grant of parole under this process is for a temporary period of up to two years. During this two-year period, the United States will continue to build on the multi-pronged, long-term strategy with our foreign partners throughout the region to support conditions that would decrease irregular migration, work to improve refugee processing and other immigration pathways in the region, and allow for increased removals of Cubans from the United States and partner nations who continue to migrate irregularly but who lack a valid claim of asylum or other forms of protection. The two-year period will also enable individuals to seek humanitarian relief or other immigration benefits, including adjustment of status pursuant to the Cuban Adjustment Act, Public Law 89–732, 80 Stat. 1161 (1966) (8 U.S.C. 1255 note), for which they may be eligible, and to work and contribute to the United States. Those who are not granted asylum or any other immigration benefits during this two-year parole period generally will need to depart the United States prior to the expiration of their authorized parole period or will be placed in removal proceedings after the period of parole expires.

The temporary, case-by-case parole of qualifying Cuban nationals pursuant to this process will provide a significant public benefit for the United States, by reducing unauthorized entries along our SWB, while also addressing the urgent humanitarian reasons that are driving hundreds of thousands of Cubans to flee their home country, to include crippling economic conditions and dire food shortages, widespread social unrest, and the Government of Cuba's (GOC) violent repression of dissent.[6] Most significantly, DHS anticipates this process will: (i) enhance the security of the U.S. SWB by reducing irregular migration of Cuban nationals, including by imposing additional consequences on those who seek to enter between POEs; (ii) improve vetting for national security and public safety; (iii) reduce the strain on DHS personnel and resources; (iv) minimize the domestic impact of irregular migration from Cuba; (v) disincentivize a dangerous irregular journey that puts migrant lives and safety at risk and enriches smuggling networks; and (vi) fulfill important foreign policy goals to manage migration collaboratively in the hemisphere.

The Secretary retains the sole discretion to terminate the process at any point.

B. Conditions at the Border

1. Impact of Venezuela Process

This process is modeled on the Venezuela process—as informed by the way that similar incentive and disincentive structures successfully decreased the number of Venezuelan nationals making the dangerous journey to and being encountered along the SWB. The Venezuela process demonstrates that combining a clear and meaningful consequence for irregular entry along the SWB with a significant incentive for migrants to wait where they are and use a safe, orderly process to come to the United States can change migratory flows. Prior to the October 12, 2022 announcement of the Venezuela process, DHS encountered approximately 1,100 Venezuelan nationals per day between POEs—with peak days exceeding 1,500. Within a week of the announcement, the number of Venezuelans encountered at the SWB fell from over 1,100 per day to under 200 per day, and as of the week ending December 4, an average of 86 per day.[7]

Panama's daily encounters of Venezuelans also declined significantly over the same time period, falling some 88 percent, from 4,399 on October 16 to 532 by the end of the month—a decline driven entirely by Venezuelan migrants' choosing not to make the dangerous journey through the Darién Gap. The number of Venezuelans attempting to enter Panama through the Darién Gap continued to decline precipitously in November—from 40,593 encounters in October, a daily average of 1,309, to just 668 in November, a daily average of just 22.[8]

The Venezuela process fundamentally changed the calculus for Venezuelan migrants. Venezuelan migrants who had already crossed the Darién Gap have returned to Venezuela by the thousands on voluntary flights organized by the governments of Mexico, Guatemala, and Panama, as well as civil society. Other migrants who were about to enter the Darién Gap have turned around and headed back south. Still others who were intending to migrate north are staying where they are to apply for this parole process. Put simply, the Venezuela process demonstrates that combining a clear and meaningful consequence for irregular entry along the SWB with a significant incentive for migrants to wait where they are and use this parole process to come to the United States can yield a meaningful change in migratory flows.

2. Trends and Flows: Increase of Cuban Nationals Arriving at the Southwest Border

The last decades have yielded a dramatic increase in encounters at the SWB and a dramatic shift in the demographics of those encountered. Throughout the 1980s and into the first decade of the 2000s, encounters along the SWB routinely numbered in the millions per year.[9] By the early 2010s, three decades of investments in border security and strategy contributed to reduced border flows, with border encounters averaging fewer than 400,000 per year from 2011–2017.[10] However, these gains were subsequently reversed as border encounters more than doubled between 2017 and 2019, and—following a steep drop in the first months of the COVID–19 pandemic—continued to increase at a similar pace in 2021 and 2022.[11]

Shifts in demographics have also had a significant effect on migration flows. Border encounters in the 1980s and

[6] Washington Office on Latin America, *U.S.-Cuba Relations: The Old, the New and What Should Come Next,* Dec. 16, 2022, *https://www.wola.org/analysis/us-cuba-relations-old-new-should-come-next/* (last visited Dec. 17, 2022).

[7] Office of Immigration Statistics (OIS) analysis of data pulled from CBP UIP December 5, 2022. Data are limited to USBP encounters to exclude those being paroled in through ports of entry.

[8] Servicio Nacional de Migración de Panamá, Irregulares en Tránsito Frontera Panamá-Colombia 2022, *https://www.migracion.gob.pa/images/img2022/PDF/IRREGULARES_%20POR_%20DARI%C3%89N_NOVIEMBRE_2022.pdf* (last viewed Dec. 11, 2022).

[9] OIS analysis of historic CBP data.

[10] *Id.*

[11] *Id.*

1990s consisted overwhelmingly of single adults from Mexico, most of whom were migrating for economic reasons.[12] Beginning in the 2010s, a growing share of migrants have come from Northern Central America [13] (NCA) and, since the late 2010s, from countries throughout the Americas.[14] Migrant populations from these newer source countries have included large numbers of families and children, many of whom are traveling to escape violence, political oppression, and for other non-economic reasons.[15]

Cubans are fleeing the island in record numbers, eclipsing the mass exodus of Cuban migrants seen during the Mariel exodus of 1980.[16] In FY 2022, DHS encountered about 213,709 unique Cuban nationals at the SWB, a seven-fold increase over FY 2021 rates, and a marked 29-fold increase over FY 2020.[17] FY 2022 average monthly unique encounters of Cuban nationals at the land border totaled 17,809, a stark increase over the average monthly rate of 589 unique encounters in FYs 2014–2019.[18] These trends are only accelerating in FY 2023. In October and November 2022, DHS encountered 62,788 unique Cuban nationals at the border—almost one third FY 2022's record total.[19] The monthly average of 31,394 unique Cuban nationals is a 76 percent increase over the FY 2022 monthly average.[20] The first 10 days of December 2022 saw 15,657 encounters of Cubans at the SWB.[21] In FY 2023, Cuban nationals have represented 16.5 percent of all unique encounters at the SWB, the second largest origin group.[22]

Maritime migration from Cuba also increased sharply in FY 2022 compared to FY 2021. According to DHS data, in FY 2022, a total of 5,740 Cuban nationals were interdicted at sea, the top nationality, compared to 827 in FY 2021, an almost 600 percent increase in a single fiscal year.[23]

In addition to the increase of Cuban nationals in U.S. Coast Guard (USCG) interdictions at sea and U.S. Customs and Border Protection (CBP) encounters at the SWB, USBP encounters of Cubans in southeast coastal sectors are also on the rise.[24] In FY 2022, DHS encountered 2,657 unique Cuban nationals (46 percent of total unique encounters), an increase of 1,040 percent compared to FY 2021.[25] This trend also has accelerated sharply in FY 2023, as CBP has made 1,917 unique encounters of Cuban nationals in the first two months of the FY—almost three-quarters of FY 2022's total.[26] Cuban nationals are 72 percent of all unique encounters in these sectors in October and November.[27]

3. Push and Pull Factors

DHS assesses that the high—and rising—number of Cuban nationals encountered at the SWB and interdicted at sea is driven by three key factors: First, Cuba is facing its worst economic crisis in decades due to the lingering impacts of the COVID–19 pandemic, high food prices, and economic sanctions.[28] Second, the government's response has been marked by further political repression, including widespread arrests and arbitrary detentions in response to protests.[29] Third, the United States faces significant limits on the ability to return Cuban nationals who do not establish a legal basis to remain in the United States to Cuba or elsewhere; absent the ability to return Cubans who do not have a lawful basis to stay in the United States, more individuals are willing to take a chance that they can come—and stay.

Further, in November 2021, the Government of Nicaragua announced visa-free travel for Cubans.[30] This policy provided Cubans a more convenient and accessible path into the continent, facilitating their ability to begin an irregular migration journey to the SWB via land routes.[31] Many such Cuban migrants fall victim to human smugglers and traffickers, who look to exploit the most vulnerable individuals for profit with utter disregard for their safety and wellbeing, as they attempt the dangerous journey northward through Central America and Mexico.[32]

i. Factors Pushing Migration From Cuba

There are a number of economic and other factors that are driving migration of Cuban nationals. Cuba is undergoing its worst economic crisis since the 1990s [33] due to the lingering impact of the COVID–19 pandemic, reduced foreign aid from Venezuela because of that country's own economic crisis, high food prices, and U.S. economic sanctions.[34] In July 2022, the

[12] According to historic OIS Yearbooks of Immigration Statistics, Mexican nationals accounted for 96 to over 99 percent of apprehensions of persons entering without inspection between 1980 and 2000. OIS Yearbook of Immigration Statistics, various years. On Mexican migrants from this era's demographics and economic motivations see Jorge Durand, Douglas S. Massey, and Emilio A. Parrado, ''The New Era of Mexican Migration to the United States,'' *The Journal of American History* Vol. 86, No. 2, 518–536 (Sept. 1999).

[13] Northern Central America refers to El Salvador, Guatemala, and Honduras.

[14] According to OIS analysis of CBP data, Mexican nationals continued to account for 89 percent of total SWB encounters in FY 2010, with Northern Central Americans accounting for 8 percent and all other nationalities for 3 percent. Northern Central Americans' share of total encounters increased to 21 percent by FY 2012 and averaged 46 percent in FY 2014–FY 2019, the last full year before the start of the COVID–19 pandemic. All other countries accounted for an average of 5 percent of total SWB encounters in FY 2010–FY 2013, and for 10 percent of total encounters in FY 2014–FY 2019.

[15] Prior to 2013, the overall share of encounters who were processed for expedited removal and claimed fear averaged less than 2 percent annually. Between 2013 and 2018, the share rose from 8 to 20 percent, before dropping with the surge of family unit encounters in 2019 (most of whom were not placed in expedited removal) and the onset of T42 expulsions in 2020. At the same time, between 2013 and 2021, among those placed in expedited removal, the share making fear claims increased from 16 to 82 percent. OIS analysis of historic CBP and USCIS data and OIS Enforcement Lifecycle through June 30, 2022.

[16] El País, *The Cuban Migration Crisis, Biggest Exodus in History Holds Key to Havana-Washington Relations,* Dec. 15, 2022, *https://english.elpais.com/international/2022-12-15/the-cuban-migration-crisis-biggest-exodus-in-history-holds-key-to-havana-washington-relations.html* (last visited Dec. 17, 2022).

[17] OIS analysis of OIS Persist Dataset based on data through November 30, 2022.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] OIS analysis of CBP Unified Immigration Portal (UIP) data pulled on December 12, 2022.

[22] OIS analysis of OIS Persist Dataset based on data through November 30, 2022.

[23] OIS analysis of United States Coast Guard (USCG) data provided October 2022; Maritime Interdiction Data from USCG, October 5, 2022.

[24] Includes Miami, FL; New Orleans, LA; and Ramey, PR sectors where all apprehensions are land apprehensions not maritime.

[25] OIS analysis of OIS Persist Dataset based on data through November 30, 2022.

[26] *Id.*

[27] *Id.*

[28] The Economist, *Cuba is Facing Its Worst Shortage of Food Since 1990s,* July 1, 2021, *https://www.economist.com/the-americas/2021/07/01/cuba-is-facing-its-worst-shortage-of-food-since-the-1990s* (last visited Dec. 17, 2022).

[29] Miami Herald, *As Cubans Demand Freedom, President Díaz-Canel Says He Will Not Tolerate 'Illegitimate' Protests,* October 2, 2022, *https://www.miamiherald.com/news/nation-world/world/americas/cuba/article266767916.html* (last visited Dec. 17, 2022).

[30] Reuters, Nicaragua Eliminates Visa Requirement for Cubans, November 23, 2021, *https://www.reuters.com/world/americas/nicaragua-eliminates-visa-requirement-cubans-2021-11-23/* (last visited Dec. 17, 2022).

[31] The New York Times, *Cuban Migrants Arrive to U.S. in Record Numbers, on Foot, Not by Boat,* May 4, 2022, *https://www.nytimes.com/2022/05/03/world/americas/cuban-migration-united-states.html* (last visited Dec. 17, 2022).

[32] CNN, *Cubans are Arriving to the U.S. in Record Numbers. Smugglers are Profiting from Their Exodus, https://www.cnn.com/2022/05/12/americas/cuba-mass-migration-intl-latam/index.html,* May 12, 2022 (last visited Dec. 17, 2022).

[33] The Economist, *Cuba is Facing Its Worst Shortage of Food Since 1990s,* July 1, 2021, *https://www.economist.com/the-americas/2021/07/01/cuba-is-facing-its-worst-shortage-of-food-since-the-1990s* (last visited Dec. 17, 2022).

[34] Congressional Research Service, *Cuba: U.S. Policy in the 117th Congress,* Sept. 22, 2022, *https:*

Continued

Government of Cuba (GOC) reported the economy contracted by 10.9% in 2020, grew by 1.3% in 2021, and is projected to expand by 4% in 2022.[35] However, this projected expansion is unlikely to respond to the needs of the Cuban people. Mass shortages of dairy and other basic goods continue to persist, and Cubans wait in lines for hours to receive subsidized cooking oil or other basic goods.[36] Deepening poverty, exacerbated by the COVID–19 pandemic, has led to food shortages and rolling blackouts, and continues to batter the economy.[37] This combination of factors has created untenable economic conditions on the island that are likely to continue to drive Cubans to travel irregularly to the United States in the immediate future.[38]

The GOC has not been able to effectively address these issues to date, and has instead taken to repressive tactics to manage public discontent. Cuba remains a one-party authoritarian regime under the Communist Party of Cuba (PCC) government, which continues to restrict freedoms of expression, association, peaceful assembly, and other human rights.[39] The GOC employs arbitrary detention to harass and intimidate critics, independent activists, political opponents, and others.[40] While the Cuban constitution grants limited freedoms of peaceful assembly and association, the GOC restricts these freedoms in practice.[41] The government routinely blocks any attempts to peacefully assemble that might result in opposition to, or criticism of, the government.[42] This was evident when the human rights situation in Cuba began to decline significantly in 2020.[43] In November 2020, the government cracked down on the San Isidro Movement (MSI), a civil society group opposed to restrictions on artistic expression.[44] This crackdown, coupled with deteriorating economic conditions (food and medicine shortages and blackouts), led to demonstrations in Havana and throughout the country.[45]

According to a Human Rights Watch report, the GOC also committed extensive human rights violations in response to massive anti-government protests in July 2021 with the apparent goal of punishing protesters and deterring future demonstrations.[46] The report documents a wide range of human rights violations against well-known government critics and ordinary citizens, including, arbitrary detention, prosecutions without fair trial guarantees, and cases of physical ill treatment, including beatings that in some cases constitute torture.[47] Several organizations reported countrywide internet outages, followed by erratic connectivity, including restrictions on social media and messaging platforms.[48]

Protests over the challenges of obtaining basic necessities have continued as have heavy-handed government responses. In September 2022, a prolonged blackout caused by Hurricane Ian led to protests in Havana and other cities.[49] Cuban President Miguel Díaz-Canel denounced the peaceful gatherings as ''counterrevolutionary'' and ''indecent,'' remarking that ''[d]emonstrations of this type have no legitimacy.''[50] Amnesty International received reports of the GOC deploying the military and police to repress these protests as well as reports of arbitrary detention.[51]

The government's repression and inability to address the underlying shortages that inspired those lawful demonstrations have generated a human rights and humanitarian crisis that is driving Cubans from the country. On June 2, 2022, the Inter-American Commission on Human Rights (IACHR) in its 2021 Annual Report stated that no guarantees currently exist for exercising freedom of expression in Cuba.[52] Although the forms of harassment of independent journalists, artists, activists, and any who question government officials are not new, the 2021 Annual Report notes that they are worsening quickly.[53] The government controls formal media and closely monitors and targets perceived dissidents within the artistic community, mainstream artists, and media figures who express independent or critical views.[54] GOC frequently blocks access to many news websites and blogs and has repeatedly imposed targeted restrictions on critics' access to cellphone data.[55]

Cuba's deteriorating economic conditions and political repression continue to increasingly drive Cubans out of their country. As a result, many have taken dangerous journeys, including through maritime means, often costing their lives at sea and on land while trying to reach the United States.

ii. Return Limitations

Due to the global COVID–19 pandemic, the GOC stopped accepting regular returns of their nationals via U.S. Immigration and Customs Enforcement (ICE) aircraft after February 28, 2020. The U.S. Government has been engaged in discussions with the GOC to reactivate the Migration Accords, which specify that the United States will process 20,000 Cuban nationals—not including immediate relatives of U.S. citizens—to come to the United States through immigrant visas and other lawful pathways, such as the Cuban Family Reunification Parole (CFRP) program, and that the Cuban government will accept the repatriation of its nationals who are encountered entering the United States without authorization. A limited number of removal flights will not, absent other efforts, impose a deterrent to Cuban nationals seeking to cross, unauthorized, into the United States.

crsreports.congress.gov/product/pdf/R/R47246 (last visited Dec. 17, 2022).

[35] Caribbean Council, *Gil Says Economic Recovery Gradual, Inflation Must Be Better Addressed,* Cuba Briefing, July 25, 2022, *https://www.caribbean-council.org/gil-says-economic-recovery-gradual-inflation-must-be-better-addressed/* (last visited Sept. 25, 2022).

[36] Washington Post, *In Cuba, a Frantic Search for Milk,* May 21, 2022, *https://www.washingtonpost.com/world/interactive/2022/cuba-economy-milk-shortage/* (last visited Sept. 25, 2022).

[37] New York Times, *'Cuba Is Depopulating': Largest Exodus Yet Threatens Country's Future,* Dec. 10, 2022. *https://www.nytimes.com/2022/12/10/world/americas/cuba-us-migration.html* (last visited Dec. 16, 2022).

[38] *Id.*

[39] U.S. Department of State, *2021 Country Reports on Human Rights Practices: Cuba, https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/cuba/* (last visited Dec. 17, 2022).

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] Congressional Research Service, Cuba: U.S. Policy Overview, Aug. 5, 2022, *https://crsreports.congress.gov/product/pdf/IF/IF10045* (last visited Dec. 17, 2022).

[44] *Id.*

[45] *Id.*

[46] Human Rights Watch, Prison or Exile: Cuba's Systematic Repression of July 2021 Demonstrators, July 11, 2022. *https://www.hrw.org/report/2022/07/11/prison-or-exile/cubas-systematic-repression-july-2021-demonstrators.*

[47] *Id.*

[48] Human Rights Watch, World Report 2022—Cuba. See *https://www.hrw.org/world-report/2022/country-chapters/cuba.*

[49] Dave Sherwood, Reuters, Oct. 1, 2022, Banging pots, Cubans stage rare protests over Hurricane Ian blackouts, *https://www.reuters.com/world/americas/cubans-havana-bang-pots-protest-days-long-blackout-after-ian-2022-09-30/.*

[50] Miami Herald, *As Cubans Demand Freedom, President Díaz-Canel Says He Will Not Tolerate 'Illegitimate' Protests,* October 2, 2022, *https://www.miamiherald.com/news/nation-world/world/americas/cuba/article266767916.html* (last visited Dec. 17, 2022).

[51] Amnesty International, *Cuba: Tactics of Repression Must Not be Repeated,* Oct. 5, 2022, *https://www.amnesty.org/en/latest/news/2022/10/cuba-repression-must-not-be-repeated/* (last viewed Dec. 19, 2022).

[52] IACHR, Annual Report 2021—Chapter IV.B—Cuba, p.678, June 2, 2022, *https://www.oas.org/en/iachr/reports/ia.asp?Year=2021* (last visited Dec. 19, 2022).

[53] *Id.*

[54] *Id.*

[55] *Id.*

As a result, the U.S. did not return any Cuban nationals directly to Cuba in FY 2022. In addition, other countries, including Mexico, have generally refused to accept the returns of Cuban nationals, with limited exceptions including Cubans who have immediate family members who are Mexican citizens or who otherwise have legal status in Mexico. In FY 2022, DHS expelled 4,710 Cuban nationals to Mexico, equivalent to 2 percent of Cuban encounters for the year.[56]

Like the Venezuela process, the Cuba process will require a significant expansion of opportunities for return or removal, to include the GOM's acceptance of Cuban nationals encountered attempting to irregularly enter the United States without authorization between POEs.

Returns alone, however, are not sufficient to reduce and divert the flows of Cubans. The United States will combine a consequence for Cuban nationals who seek to enter the United States irregularly at the land border with an incentive to use the safe, orderly process to request authorization to travel by air to, and seek parole to enter, the United States, without making the dangerous journey to the border.

4. Impact on DHS Resources and Operations

To respond to the increase in encounters along the SWB since FY 2021—an increase that has accelerated in FY 2022, driven in part by the number of Cuban nationals encountered—DHS has taken a series of extraordinary steps. Since FY 2021, DHS has built and now operates 10 soft-sided processing facilities at a cost of $688 million. CBP and ICE detailed a combined 3,770 officers and agents to the SWB to effectively manage this processing surge. In FY 2022, DHS had to utilize its above threshold reprogramming authority to identify approximately $281 million from other divisions in the Department to address SWB needs, to include facilities, transportation, medical care, and personnel costs.

The Federal Emergency Management Agency (FEMA) has spent $260 million in FYs 2021 and 2022 combined on grants to non-governmental (NGO) and state and local entities through the Emergency Food and Shelter Program—Humanitarian (EFSP–H) to assist with the reception and onward travel of migrants arriving at the SWB. This spending is in addition to $1.4 billion in additional FY 2022 appropriations that were designated for SWB enforcement and processing capacities.[57]

The impact has been particularly acute in certain border sectors. The increased flows of Cuban nationals are disproportionately occurring within the remote Del Rio and Yuma sectors, both of which are at risk of operating, or are currently operating, over capacity. In FY 2022, 73 percent of unique encounters of Cuban nationals occurred in these two sectors.[58] Thus far in FY 2023, Del Rio and Yuma sectors have accounted for 72 percent of unique encounters of Cuban nationals.[59] In FY 2022, Del Rio and Yuma sectors encountered over double (137 percent increase) the number of migrants as compared to FY 2021, a fifteen-fold increase over the average for FY 2014–FY 2019, in part as a result of the sharp increase in Cuban nationals being encountered there.[60]

The focused increase in encounters within those two sectors is particularly challenging. Del Rio sector is geographically remote, and because—up until the past two years—it has not been a focal point for large numbers of individuals entering irregularly, it has limited infrastructure and personnel in place to safely process the elevated encounters that they are seeing. The Yuma Sector is along the Colorado River corridor, which presents additional challenges to migrants, such as armed robbery, assault by bandits, and drowning, as well as to the U.S. Border Patrol (USBP) agents encountering them. El Paso sector has relatively modern infrastructure for processing noncitizens encountered at the border but is far away from other CBP sectors, which makes it challenging to move individuals for processing elsewhere during surges.

In an effort to decompress sectors that are experiencing surges, DHS deploys lateral transportation, using buses and flights to move noncitizens to other sectors that have additional capacity to process. In November 2022, USBP sectors along the SWB operated a combined 602 decompression bus routes to neighboring sectors and operated 124 lateral decompression flights, redistributing noncitizens to other sectors with additional capacity.[61]

Because DHS assets are finite, using air resources to operate lateral flights reduces DHS's ability to operate international repatriation flights to receiving countries, leaving noncitizens in custody for longer and further taxing DHS resources. Fewer international repatriation flights in turn exacerbates DHS's inability to return or remove noncitizens in its custody by sending the message that there is no consequence for illegal entry.

The sharp increase in maritime migration has also had a substantial impact on DHS resources. USCG has surged resources and shifted assets from other missions due to this increased irregular maritime migration. In response to the persistently elevated levels of irregular maritime migration across all southeast vectors, the Director of Homeland Security Task Force-Southeast (HSTF–SE) elevated the operational phase of DHS's maritime mass migration plan (Operation Vigilant Sentry) from Phase 1A (Preparation) to Phase 1B (Prevention).[62] Operation Vigilant Sentry is HSTF–SE's comprehensive, integrated, national operational plan for a rapid, effective, and unified response of federal, state, and local capabilities in response to indicators and/or warnings of a mass migration in the Caribbean.

The shift to Phase 1B triggered the surge of additional DHS resources to support HSTF–SE's Unified Command staff and operational rhythm. For example, between July 2021 and August 2022, Coast Guard operational planners surged three times the number of large cutters to the South Florida Straits and the Windward Passage, four times the number of patrol boats and twice the number of fixed/rotary-wing aircraft to support maritime domain awareness and interdiction operations in the southeastern maritime approaches to the United States. USCG also added two MH–60 helicopters to respond to increased maritime migration flows in FY 2022.[63] Moreover, USCG had to almost double its flight hour coverage per month to support migrant interdictions in FY 2022. Increased resource demands translate into increased maintenance on those high demand air and sea assets.

DHS assesses that a reduction in the flow of Cuban nationals arriving at the SWB or taking to sea would reduce pressure on overstretched resources and enable the Department to more quickly

[56] OIS analysis of OIS Persist Dataset and CBP subject-level data through November 30, 2022.

[57] DHS Memorandum from Alejandro N. Mayorkas, Secretary of Homeland Security, to Interested Parties, *DHS Plan for Southwest Border Security and Preparedness* (Apr. 26, 2022), *https://www.dhs.gov/sites/default/files/2022-04/22_0426_dhs-plan-southwest-border-security-preparedness.pdf.*

[58] OIS analysis of OIS Persist Dataset based on data through November 30, 2022.

[59] *Id.*

[60] *Id.*

[61] Data from SBCC, as of December 11, 2022.

[62] Operation Vigilant Sentry (OVS) Phase 1B, Information Memorandum for the Secretary from RADM Brendon C. McPherson, Director, Homeland Security Task Force—Southeast, August 21, 2022.

[63] Joint DHS and DOD Brief on Mass Maritime Migration, August 2022.

process and, as appropriate, return or remove those who do not have a lawful basis to stay, or repatriate those encountered at sea while also delivering on other maritime missions.

II. DHS Parole Authority

The Immigration and Nationality Act (INA or Act) provides the Secretary of Homeland Security with the discretionary authority to parole noncitizens ''into the United States temporarily under such reasonable conditions as [the Secretary] may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.'' [64] Parole is not an admission of the individual to the United States, and a parolee remains an ''applicant for admission'' during the period of parole in the United States.[65] DHS sets the duration of the parole based on the purpose for granting the parole request and may impose reasonable conditions on parole.[66] DHS may terminate parole in its discretion at any time.[67] By regulation, parolees may apply for and be granted employment authorization to work lawfully in the United States.[68]

This process will combine a consequence for those who seek to enter the United States irregularly between POEs with a significant incentive for Cuban nationals to remain where they are and use a lawful process to request authorization to travel by air to, and ultimately apply for discretionary grant of parole into, the United States for a period of up to two years.

III. Justification for the Process

As noted above, section 212(d)(5)(A) of the INA confers upon the Secretary of Homeland Security the discretionary authority to parole noncitizens ''into the United States temporarily under such reasonable conditions as [the Secretary] may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.'' [69]

A. Significant Public Benefit

The parole of Cuban nationals and their immediate family members under this process—which imposes new consequences for Cubans who seek to enter the United States irregularly between POEs, while providing an alternative opportunity for eligible Cuban nationals to seek advance authorization to travel to the United States to seek discretionary parole, on a case-by-case basis, in the United States—serves a significant public benefit for several, interrelated reasons. Specifically, we anticipate that the parole of eligible individuals pursuant to this process will: (i) enhance border security through a reduction in irregular migration of Cuban nationals, including by imposing additional consequences on those who seek to enter between POEs; (ii) improve vetting for national security and public safety; (iii) reduce strain on DHS personnel and resources; (iv) minimize the domestic impact of irregular migration from Cuba; (v) provide a disincentive to undergo the dangerous journey that puts migrant lives and safety at risk and enriches smuggling networks; and (vi) fulfill important foreign policy goals to manage migration collaboratively in the hemisphere and, as part of those efforts, to establish additional processing pathways from within the region to discourage irregular migration.

1. Enhance Border Security by Reducing Irregular Migration of Cuban Nationals

As described above, Cuban nationals make up a significant and growing number of those encountered seeking to cross between POEs irregularly. DHS assesses that without additional and more immediate consequences imposed on those who seek to do so, together with a safe and orderly process for Cubans to enter the United States, without making the journey to the SWB, the numbers will continue to grow.

By incentivizing individuals to seek a safe, orderly means of traveling to the United States through the creation of an alternative pathway to the United States, while imposing additional consequences to irregular migration, DHS assesses this process could lead to a meaningful drop in encounters of Cuban individuals along the SWB and at sea. This expectation is informed by the recently implemented process for Venezuelans and the significant shifts in migratory patterns that took place once the process was initiated. The success to date of the Venezuela process provides compelling evidence that coupling effective disincentives for irregular entry with incentives for a safe, orderly parole process can meaningfully shift migration patterns in the region and to the SWB.

Implementation of the parole process is contingent on the GOM's independent decision to accept the return of Cuban nationals who voluntarily depart the United States, those who voluntarily withdraw their applications for admission, and those subject to expedited removal who cannot be removed to Cuba or elsewhere. The ability to effectuate voluntary departures, withdrawals, and removals of Cuban nationals to Mexico will impose a consequence on irregular entry that currently does not exist.

2. Improve Vetting for National Security and Public Safety

All noncitizens whom DHS encounters at the border undergo thorough vetting against national security and public safety databases during their processing. Individuals who are determined to pose a national security or public safety threat are detained pending removal. That said, there are distinct advantages to being able to vet more individuals before they arrive at the border so that we can stop individuals who could pose threats to national security or public safety even earlier in the process. The Cuban parole process will allow DHS to vet potential beneficiaries for national security and public safety purposes before they travel to the United States.

As described below, the vetting will require prospective beneficiaries to upload a live photograph via an app. This will enhance the scope of the pre-travel vetting—thereby enabling DHS to better identify those with criminal records or other disqualifying information of concern and deny them travel before they arrive at our border, representing an improvement over the status quo.

3. Reduce the Burden on DHS Personnel and Resources

By reducing encounters of Cuban nationals encountered at sea or at the SWB, and channeling decreased flows of Cuban nationals to interior POEs, we anticipate that the process could relieve some of the impact increased migratory flows have had on the DHS workforce along the SWB. This process is expected to free up resources, including those focused on decompression of border sectors, which in turn may enable an increase in removal flights—allowing for the removal of more noncitizens with final orders of removal faster and reducing the number of days migrants are in DHS custody. While the process will also draw on DHS resources within U.S. Citizenship and Immigration Services (USCIS) and CBP to process requests for discretionary parole on a

[64] INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A); *see also* 6 U.S.C. 202(4) (charging the Secretary with the responsibility for ''[e]stablishing and administering rules . . . governing . . . parole''). Cubans paroled into the United States through this process are not being paroled as refugees, and instead will be considered for parole on a case-by-case basis for a significant public benefit or urgent humanitarian reasons. This parole process does not, and is not intended to, replace refugee processing.

[65] INA sec. 101(a)(13)(B), 212(d)(5)(A), 8 U.S.C. 1101(a)(13)(B), 1182(d)(5)(A).

[66] *See* 8 CFR 212.5(c).

[67] *See* 8 CFR 212.5(e).

[68] *See* 8 CFR 274a.12(c)(11).

[69] INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A).

case-by-case basis and conduct vetting, these requirements involve different parts of DHS and require fewer resources as compared to the status quo.

In the Caribbean, DHS also has surged significant resources—mostly from USCG—to address the heightened rate of maritime encounters. Providing a safe and orderly alternative path is expected to also reduce the number of Cubans who seek to enter the United States by sea, and will allow USCG to better balance its other important missions, including its counter-drug smuggling operations, protection of living marine resources, support for shipping navigation, and a range of other critical international engagements.

In addition, permitting Cuban nationals to voluntarily depart or withdraw their application for admission one time and still be considered for parole through the process will reduce the burden on DHS personnel and resources that would otherwise be required to obtain and execute a final order of removal. This includes reducing strain on detention and removal flight capacity, officer resources, and reducing costs associated with detention and monitoring.

4. Minimize the Domestic Impact

Though the Venezuelan process has significantly reduced the encounters of Venezuelan nationals, other migratory flows continue to strain domestic resources, which is felt most acutely by border communities. Given the inability to remove, return, or repatriate Cuban nationals in substantial numbers, DHS is currently conditionally releasing 87 percent of the Cuban nationals it encounters at the border, pending their removal proceedings or the initiation of such proceedings, and Cuban nationals accounted for 23 percent of all encounters released at the border in November 2022.[70] The increased volume of provisional releases of Cuban nationals puts strains on U.S. border communities.

Generally, since FY 2019, DHS has worked with Congress to make approximately $290 million available through FEMA's EFSP to support NGOs and local governments that provide initial reception for migrants entering through the SWB. These entities have engaged to provide services and assistance to Cuban nationals and other noncitizens who have arrived at our border, including by building new administrative structures, finding additional housing facilities, and constructing tent shelters to address the increased need.[71] FEMA funding has supported building significant NGO capacity along the SWB, including a substantial increase in available shelter beds in key locations.

Nevertheless, local communities have reported strain on their ability to provide needed social services. Local officials and NGOs report that the temporary shelters that house migrants are quickly reaching capacity due to the high number of arrivals,[72] and stakeholders in the border region have expressed concern that shelters will eventually reach full bed space capacity and not be able to host any new arrivals.[73] Since Cuban nationals account for a significant percentage of the individuals being conditionally released into communities after being processed along the SWB, this parole process will address these concerns by diverting flows of Cuban nationals into a safe and orderly process in ways that DHS anticipates will yield a decrease in the numbers arriving at the SWB.

DHS anticipates that this process will help minimize the burden on communities, state and local governments, and NGOs who support the reception and onward travel of migrants arriving at the SWB. Beneficiaries are required to fly at their own expense to an interior POE, rather than arriving at the SWB. They also are only authorized to come to the United States if they have a supporter who has agreed to receive them and provide basic needs, including housing support. Beneficiaries also are eligible to apply for work authorization, thus enabling them to support themselves.

5. Disincentivize a Dangerous Journey That Puts Migrant Lives and Safety at Risk and Enriches Smuggling Networks

The process, which will incentivize intending migrants to use a safe, orderly, and lawful means to access the United States via commercial air flights, cuts out the smuggling networks. This is critical, because transnational criminal organizations—including the Mexican drug cartels—are increasingly playing a key role in human smuggling, reaping billions of dollars in profit and callously endangering migrants' lives along the way.[74]

In FY 2022, more than 750 migrants died attempting to enter the United States across the SWB,[75] an estimated 32 percent increase from FY 2021 (568 deaths) and a 195 percent increase from FY 2020 (254 deaths).[76] The approximate number of migrants rescued by CBP in FY 2022 (almost 19,000 rescues)[77] increased 48 percent from FY 2021 (12,857 rescues), and 256 percent from FY 2020 (5,336 rescues).[78] Although exact figures are unknown, experts estimate that about 30 bodies have been taken out of the Rio Grande River each month since March 2022.[79] CBP attributes these rising trends to increasing numbers of migrants, as evidenced by increases in overall U.S. Border Patrol encounters.[80] The increased rates of both migrant deaths and those needing rescue at the SWB demonstrate the perils in the migrant journey.

Meanwhile, these numbers do not account for the countless incidents of death, illness, and exploitation migrants experience during the perilous journey north. These migratory movements are in many cases facilitated by numerous human smuggling organizations, for which the migrants are pawns;[81] the organizations exploit migrants for profit, often bringing them across inhospitable deserts, rugged mountains, and raging rivers, often with small children in tow. Upon reaching the border area,

[70] OIS analysis of CBP subject-level data and OIS Persist Dataset based on data through November 30, 2022.

[71] CNN, *Washington, DC, Approves Creation of New Agency to Provide Services for Migrants Arriving From Other States,* Sept. 21, 2022, *https://www.cnn.com/2022/09/21/us/washington-dc-migrant-services-office.*

[72] San Antonio Report, *Migrant aid groups stretched thin as city officials seek federal help for expected wave,* Apr. 27, 2022, *https://sanantonioreport.org/migrant-aid-groups-stretched-thin-city-officials-seek-federal-help/.*

[73] KGUN9 Tucson, *Local Migrant Shelter Reaching Max Capacity as it Receives Hundreds per Day,* Sept. 23, 2022, *https://www.kgun9.com/news/local-news/local-migrant-shelter-reaching-max-capacity-as-it-receives-hundreds-per-day.*

[74] CBP, Fact Sheet: Counter Human Smuggler Campaign Updated (Oct. 6, 2022), *https://www.dhs.gov/news/2022/10/06/fact-sheet-counter-human-smuggler-campaign-update-dhs-led-effort-makes-5000th.*

[75] CNN, *First on CNN: A Record Number of Migrants Have Died Crossing the US-Mexico Border* (Sept. 7, 2022), *https://www.cnn.com/2022/09/07/politics/us-mexico-border-crossing-deaths/index.html.*

[76] DHS, CBP, *Rescue Beacons and Unidentified Remains: Fiscal Year 2022 Report to Congress.*

[77] CNN, *First on CNN: A Record Number of Migrants Have Died Crossing the US-Mexico Border* (Sept. 7, 2022), *https://www.cnn.com/2022/09/07/politics/us-mexico-border-crossing-deaths/index.html.*

[78] DHS, CBP, *Rescue Beacons and Unidentified Remains: Fiscal Year 2022 Report to Congress.*

[79] The Guardian, *Migrants Risk Death Crossing Treacherous Rio Grande River for 'American Dream'* (Sept. 5, 2022), *https://www.theguardian.com/us-news/2022/sep/05/migrants-risk-death-crossing-treacherous-rio-grande-river-for-american-dream.*

[80] DHS, CBP, *Rescue Beacons and Unidentified Remains: Fiscal Year 2022 Report to Congress.*

[81] DHS Memorandum from Alejandro N. Mayorkas, Secretary of Homeland Security, to Interested Parties, *DHS Plan for Southwest Border Security and Preparedness* (Apr. 26, 2022), *https://www.dhs.gov/sites/default/files/2022-04/22_0426_dhs-plan-southwest-border-security-preparedness.pdf.*

noncitizens seeking to cross into the United States generally pay transnational criminal organizations (TCOs) to coordinate and guide them along the final miles of their journey. Tragically, a significant number of individuals perish along the way. The trailer truck accident that killed 55 migrants in Chiapas, Mexico, in December 2021 and the tragic incident in San Antonio, Texas, on June 27, 2022, in which 53 migrants died of the heat in appalling conditions, are just two examples of many in which TCOs engaged in human smuggling prioritize profit over safety.[82]

Migrants who travel via sea also face perilous conditions, including at the hands of smugglers. Human smugglers continue to use unseaworthy, overcrowded vessels that are piloted by inexperienced mariners. These vessels often lack any safety equipment, including but not limited to: personal flotation devices, radios, maritime global positioning systems, or vessel locator beacons. USCG and interagency consent-based interviews suggest that human-smuggling networks and migrants consider the attempts worth the risk.[83]

The increase in migrants taking to sea, under dangerous conditions, has led to devastating consequences. In FY 2022, the USCG recorded 107 noncitizen deaths, including presumed dead, as a result of irregular maritime migration. In January 2022, the Coast Guard located a capsized vessel with a survivor clinging to the hull. USCG crews interviewed the survivor who indicated there were 34 others on the vessel, who were not in the vicinity of the capsized vessel and survivor.[84] The USCG conducted a multi-day air and surface search for the missing migrants, eventually recovering five deceased migrants; the others were presumed lost at sea.[85]

DHS anticipates this process will save lives and undermine the profits and operations of the dangerous TCOs that put migrants' lives at risk for profit because it incentivizes intending migrants to use a safe and orderly means to access the United States via commercial air flights, thus ultimately reducing the demand for smuggling networks to facilitate the dangerous journey to the SWB. By reducing the demand for these services, DHS is effectively targeting the resources of TCOs and human-smuggling networks that so often facilitate these unprecedented movements with utter disregard for the health and safety of migrants. DHS and federal partners have taken extraordinary measures—including the largest-ever surge of resources against human-smuggling networks—to combat and disrupt the TCOs and smugglers and will continue to do so.[86]

6. Fulfill Important Foreign Policy Goals To Manage Migration Collaboratively in the Hemisphere

Promoting a safe, orderly, legal, and humane migration strategy throughout the Western Hemisphere has been a top foreign policy priority for the Administration. This is reflected in three policy-setting documents: the U.S. Strategy for Addressing the Root Causes of Migration in Central America (Root Causes Strategy);[87] the Collaborative Migration Management Strategy (CMMS);[88] and the Los Angeles Declaration on Migration and Protection (L.A. Declaration), which was endorsed in June 2022 by 21 countries.[89] The CMMS and the L.A. Declaration call for a collaborative and regional approach to migration, wherein countries in the hemisphere commit to implementing programs and processes to stabilize communities hosting migrants or those of high outward-migration; humanely enforce existing laws regarding movements across international boundaries, especially when minors are involved; take actions to stop migrant smuggling by targeting the criminals involved in these activities; and provide increased regular pathways and protections for migrants residing in or transiting through the 21 countries.[90] The L.A. Declaration specifically lays out the goal of collectively ''expand[ing] access to regular pathways for migrants and refugees.''[91]

The U.S. Government has been working with the GOC to restart the Cuba Migration Accords. On November 15, 2022, U.S. and Cuban officials met in Havana to discuss the implementation of the Accords and to underscore our commitment to pursuing safe, regular, and humane migration between Cuba and the United States.[92] These Migration Talks provide an opportunity for important discussions on mutual compliance with the Migration Accords—composed of a series of binding bilateral agreements between the United States and Cuba signed in 1984, 1994, 1995, and 2017—which establish certain commitments of the United States and Cuba relating to safe, legal, and orderly migration.

In September 2022, the U.S. Government announced the resumption of operations under the CFRP program, which allows certain beneficiaries of family-based immigrant petitions to seek parole into the United States while waiting for a visa number to become available. Beginning in early 2023, U.S. Embassy Havana will resume full immigrant visa processing for the first time since 2017, which will, over time, increase the pool of noncitizens eligible for CFRP.[93] Approved beneficiaries through this process will enter the United States as parolees but will be eligible to apply for adjustment to lawful permanent resident (LPR) status once their immigrant visas become available. Also during this period, Cubans may be eligible to apply for lawful permanent residence under the Cuban Adjustment Act.[94]

While these efforts represent important progress for certain Cubans who are the beneficiaries of a family-based immigrant petition, CFRP's narrow eligibility, challenges faced

[82] Reuters, *Migrant Truck Crashes in Mexico Killing 54* (Dec. 9, 2021), *https://www.reuters.com/article/uk-usa-immigration-mexico-accident-idUKKBN2IP01R;* Reuters, *The Border's Toll: Migrants Increasingly Die Crossing into U.S. from Mexico* (July 25, 2022), *https://www.reuters.com/article/usa-immigration-border-deaths/the-borders-toll-migrants-increasingly-die-crossing-into-u-s-from-mexico-idUSL4N2Z247X.*

[83] Email from U.S. Coast Guard to DHS Policy, Re: heads up on assistance needed, Dec. 13, 2022.

[84] Adriana Gomez Licon, Associated Press, Situation 'dire' as Coast Guard seeks 38 missing off Florida, Jan. 26, 2022, *https://apnews.com/article/florida-capsized-boat-live-updates-f251d7d279b6c1fe064304740c3a3019.*

[85] Adriana Gomez Licon, Associated Press, Coast Guard suspends search for migrants off Florida, Jan. 27, 2022, *https://apnews.com/article/florida-lost-at-sea-79253e1c65cf5708f19a97b6875ae239.*

[86] *See* DHS Update on Southwest Border Security and Preparedness Ahead of Court-Ordered Lifting of Title 42, Dec. 13, 2022, *https://www.dhs.gov/publication/update-southwest-border-security-and-preparedness-ahead-court-ordered-lifting-title-42* (last visited Dec. 18, 2022).

[87] National Security Council, *Root Causes of Migration in Central America* (July 2021), *https://www.whitehouse.gov/wp-content/uploads/2021/07/Root-Causes-Strategy.pdf.*

[88] National Security Council, *Collaborative Migration Management Strategy,* July 2021, *https://www.whitehouse.gov/wp-content/uploads/2021/07/Collaborative-Migration-Management-Strategy.pdf?utm_medium=email&utm_source=govdelivery.*

[89] *Id.;* The White House, *Los Angeles Declaration on Migration and Protection* (LA Declaration), June 10, 2022, *https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/10/los-angeles-declaration-on-migration-and-protection/.*

[90] *Id.*

[91] *Id.*

[92] Department of State, *Migration Talks with the Government of Cuba,* Nov. 15, 2022; *https://www.state.gov/migration-talks-with-the-government-of-cuba-2/.*

[93] USCIS, *USCIS Resumes Cuban Family Reunification Parole Program Operations, https://www.uscis.gov/newsroom/alerts/uscis-resumes-cuban-family-reunification-parole-program-operations,* Sept. 9, 2022 (last visited Dec. 10, 2022).

[94] Public Law 89–732, Cuban Adjustment Act of 1966 (CAA), Nov. 2, 1966, *https://www.gpo.gov/fdsys/pkg/STATUTE-80/pdf/STATUTE-80-Pg1161.pdf* (last viewed Dec. 16, 2022).

operating in Cuba, and more modest processing throughput mean that additional pathways are required to meet the current and acute border security and irregular migration mitigation objective. This new process helps achieve these goals by providing an immediate and temporary orderly process for Cuban nationals to lawfully enter the United States while we work to improve conditions in Cuba and expand more permanent lawful immigration pathways in the region, including refugee processing and other lawful pathways into the United States and other Western Hemisphere countries. It thus provides the United States another avenue to lead by example.

The process also responds to an acute foreign policy need. Key allies in the region—including specifically the Governments of Mexico, Honduras, Guatemala, and Costa Rica—are affected by the increased movement of Cuban nationals and have been seeking greater U.S. action to address these challenging flows for some time. Cuban flows contribute to strain on governmental and civil society resources in Mexican border communities in both the south and the north—something that key foreign government partners have been urging the United States to address.

Along with the Venezuelan process, this new process adds to these efforts and enables the United States to lead by example. Such processes are a key mechanism to advance the larger domestic and foreign policy goals of the U.S. Government to promote a safe, orderly, legal, and humane migration strategy throughout our hemisphere. The new process also strengthens the foundation for the United States to press regional partners—many of which are already taking important steps—to undertake additional actions with regards to this population, as part of a regional response. Any effort to meaningfully address the crisis in Cuba will require continued efforts by these and other regional partners.

Importantly, the United States will only implement the new parole process while able to remove or return to Mexico Cuban nationals who enter the United States without authorization across the SWB. The United States' ability to execute this process thus is contingent on the GOM making an independent decision to accept the return or removal of Cuban nationals who bypass this new process and enter the United States without authorization.

For its part, the GOM has made clear its position that, in order to effectively manage the migratory flows that are impacting both countries, the United States needs to provide additional safe, orderly, and lawful processes for migrants who seek to enter the United States. The GOM, as it makes its independent decisions as to its ability to accept returns of third country nationals at the border and its efforts to manage migration within Mexico, is thus closely watching the United States' approach to migration management and whether it is delivering on its plans in this space. Initiating and managing this process—which is dependent on GOM's actions—will require careful, deliberate, and regular assessment of GOM's responses to U.S. actions in this regard, and ongoing, sensitive diplomatic engagements.

As noted above, this process is responsive to the GOM's request that the United States increase lawful pathways for migrants and is also aligned with broader Administration domestic and foreign policy priorities in the region. The process couples a meaningful incentive to seek a lawful, orderly means of traveling to the United States with the imposition of consequences for those who seek to enter irregularly along the SWB. The goal of this process is to reduce the irregular migration of Cuban nationals while the United States, together with partners in the region, works to improve conditions in sending countries and create more immigration and refugee pathways in the region, including to the United States.

B. Urgent Humanitarian Reasons

The case-by-case temporary parole of individuals pursuant to this process will address the urgent humanitarian needs of Cuban nationals who have fled crippling economic conditions and social unrest in Cuba. The GOC continues to repress and punish all forms of dissent and public criticism of the regime and has continued to take actions against those who oppose its positions.[95] This process provides a safe mechanism for Cuban nationals who seek to leave their home country to enter the United States without having to make the dangerous journey to the United States.

IV. Eligibility To Participate in the Process and Processing Steps

A. Supporters

U.S.-based supporters must initiate the process by filing Form I–134A on behalf of a Cuban national and, if applicable, the national's immediate family members.[96] Supporters may be individuals filing on their own, with other individuals, or on behalf of non-governmental entities or community-based organizations. Supporters are required to provide evidence of income and assets and declare their willingness to provide financial support to the named beneficiary for the length of parole. Supporters are required to undergo vetting to identify potential human trafficking or other concerns. To serve as a supporter under the process, an individual must:

- be a U.S. citizen, national, or lawful permanent resident; hold a lawful status in the United States; or be a parolee or recipient of deferred action or Deferred Enforced Departure;
- pass security and background vetting, including for public safety, national security, human trafficking, and exploitation concerns; and
- demonstrate sufficient financial resources to receive, maintain, and support the intended beneficiary whom they commit to support for the duration of their parole period.

B. Beneficiaries

In order to be eligible to request and ultimately be considered for a discretionary issuance of advance authorization to travel to the United States to seek a discretionary grant of parole at the POE, such individuals must:

- be outside the United States;
- be a national of Cuba or be a non-Cuban immediate family member[97] and traveling with a Cuban principal beneficiary;
- have a U.S.-based supporter who filed a Form I–134A on their behalf that USCIS has vetted and confirmed;
- possess an unexpired passport valid for international travel;
- provide for their own commercial travel to an air POE and final U.S. destination;
- undergo and pass required national security and public safety vetting;
- comply with all additional requirements, including vaccination requirements and other public health guidelines; and

[95] *Id.;* Congressional Research Service, Cuba: U.S. Policy in the 117th Congress, Sept. 22, 2022, *https://crsreports.congress.gov/product/pdf/R/R47246.*

[96] Certain non-Cubans may use this process if they are an immediate family member of a Cuban beneficiary and traveling with that Cuban beneficiary. For purposes of this process, immediate family members are limited to a spouse, common-law partner, and/or unmarried child(ren) under the age of 21.

[97] Certain non-Cubans may use this process if they are an immediate family member of a Cuban beneficiary and traveling with that Cuban beneficiary. For purposes of this process, immediate family members are limited to a spouse, common-law partner, and/or unmarried child(ren) under the age of 21.

• demonstrate that a grant of parole is warranted based on significant public benefit or urgent humanitarian reasons, as described above, and that a favorable exercise of discretion is otherwise merited.

A Cuban national is ineligible to be considered for advance authorization to travel to the United States as well as parole under this process if that person is a permanent resident or dual national of any country other than Cuba, or currently holds refugee status in any country, unless DHS operates a similar parole process for the country's nationals.[98]

In addition, a potential beneficiary is ineligible for advance authorization to travel to the United States as well as parole under this process if that person:

• fails to pass national security and public safety vetting or is otherwise deemed not to merit a favorable exercise of discretion;

• has been ordered removed from the United States within the prior five years or is subject to a bar to admissibility based on a prior removal order; [99]

• has crossed irregularly into the United States, between the POEs, after January 9, 2023, except individuals permitted a single instance of voluntary departure pursuant to INA section 240B, 8 U.S.C. 1229c or withdrawal of their application for admission pursuant to INA section 235(a)(4), 8 U.S.C. 1225(a)(4) will remain eligible;

• has irregularly crossed the Mexican or Panamanian border after January 9, 2023; or

• is under 18 and not traveling through this process accompanied by a parent or legal guardian, and as such is a child whom the inspecting officer would determine to be an unaccompanied child.[100]

Travel Requirements: Beneficiaries who receive advance authorization to travel to the United States to seek parole into the United States will be responsible for arranging and funding their own commercial air travel to an interior POE of the United States.

Health Requirements: Beneficiaries must follow all applicable requirements, as determined by DHS's Chief Medical Officer, in consultation with the Centers for Disease Control and Prevention, with respect to health and travel, including vaccination and/or testing requirements for diseases including COVID–19, polio, and measles. The most up-to-date public health requirements applicable to this process will be available at *www.uscis.gov/CHNV.*

C. Processing Steps

Step 1: Declaration of Financial Support

A U.S.-based supporter will submit a Form I–134A, Online Request to be a Supporter and Declaration of Financial Support, with USCIS through the online myUSCIS web portal to initiate the process. The Form I–134A identifies and collects information on both the supporter and the beneficiary. The supporter must submit a separate Form I–134A for each beneficiary they are seeking to support, including Cubans' immediate family members and minor children. The supporter will then be vetted by USCIS to protect against exploitation and abuse, and to ensure that the supporter is able to financially support the beneficiary whom they agree to support. Supporters must be vetted and confirmed by USCIS, at USCIS' discretion, before moving forward in the process.

Step 2: Submit Biographic Information

If a supporter is confirmed by USCIS, the listed beneficiary will receive an email from USCIS with instructions to create an online account with myUSCIS and next steps for completing the application. The beneficiary will be required to confirm their biographic information in their online account and attest to meeting the eligibility requirements.

As part of confirming eligibility in their myUSCIS account, individuals who seek authorization to travel to the United States will need to confirm that they meet public health requirements, including certain vaccination requirements.

Step 3: Submit Request in CBP One Mobile Application

After confirming biographic information in myUSCIS and completing required eligibility attestations, the beneficiary will receive instructions through myUSCIS for accessing the CBP One mobile application. The beneficiary must then enter limited biographic information into CBP One and submit a live photo.

Step 4: Approval To Travel to the United States

After completing Step 3, the beneficiary will receive a notice in their myUSCIS account confirming whether CBP has, in CBP's discretion, provided the beneficiary with advance authorization to travel to the United States to seek a discretionary grant of parole on a case-by-case basis. If approved, this authorization is generally valid for 90 days, and beneficiaries are responsible for securing their own travel via commercial air to an interior POE of the United States.[101] Approval of advance authorization to travel does not guarantee parole into the United States. Whether to parole the individual is a discretionary determination made by CBP at the POE at the time the individual arrives at the interior POE.

All of the steps in this process, including the decision to grant or deny advance travel authorization and the parole decision at the interior POE, are entirely discretionary and not subject to appeal on any grounds.

Step 5: Seeking Parole at the POE

Each individual arriving at a POE under this process will be inspected by CBP and considered for a grant of discretionary parole for a period of up to two years on a case-by-case basis.

As part of the inspection, beneficiaries will undergo additional screening and vetting, to include additional fingerprint biometric vetting consistent with CBP inspection processes. Individuals who are determined to pose a national security or public safety threat or otherwise do not warrant parole pursuant to section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A), and as a matter of discretion upon inspection, will be processed under an appropriate processing pathway and may be referred to ICE for detention.

Step 6: Parole

If granted parole pursuant to this process, each individual generally will be paroled into the United States for a period of up to two years, subject to applicable health and vetting requirements, and will be eligible to apply for employment authorization under existing regulations. Individuals may request employment authorization from USCIS. USCIS is leveraging technological and process efficiencies to minimize processing times for requests for employment authorization. All individuals two years of age or older will be required to complete a medical screening for tuberculosis, including an IGRA test, within 90 days of arrival to the United States.

[98] This limitation does not apply to immediate family members traveling with a Cuban national.

[99] *See, e.g.,* INA sec. 212(a)(9)(A), 8 U.S.C. 1182(a)(9)(A).

[100] As defined in 6 U.S.C. 279(g)(2). Children under the age of 18 must be traveling to the United States in the care and custody of their parent or legal guardian to be considered for parole at the POE under the process.

[101] Air carriers can validate an approved and valid travel authorization submission using the same mechanisms that are currently in place to validate that a traveler has a valid visa or other documentation to facilitate issuance of a boarding pass for air travel.

D. Scope, Termination, and No Private Rights

The Secretary retains the sole discretion to terminate the Parole Process for Cubans at any point. The number of travel authorizations granted under this process shall be spread across this process and the separate and independent Parole Process for Nicaraguans, the Parole Process for Haitians, and Parole Process for Venezuelans (as described in separate notices published concurrently in today's edition of the **Federal Register**) and shall not exceed 30,000 each month in the aggregate. Each of these processes operates independently, and any action to terminate or modify any of the other processes will have no bearing on the criteria for or independent decisions with respect to this process.

This process is being implemented as a matter of the Secretary's discretion. It is not intended to and does not create any rights, substantive or procedural, enforceable by any party in any matter, civil or criminal.

V. Regulatory Requirements

A. Administrative Procedure Act

This process is exempt from notice-and-comment rulemaking and delayed effective date requirements on multiple grounds, and is therefore amenable to immediate issuance and implementation.

First, the Department is merely adopting a general statement of policy,[102] *i.e.,* a ''statement[ ] issued by an agency to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.'' [103] As section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A), provides, parole decisions are made by the Secretary of Homeland Security ''in his discretion.''

Second, even if this process were considered to be a legislative rule that would normally be subject to requirements for notice-and-comment rulemaking and a delayed effective date, the process would be exempt from such requirements because it involves a foreign affairs function of the United States.[104] Courts have held that this exemption applies when the rule in question ''is clearly and directly involved in a foreign affairs function.'' [105] In addition, although the text of the Administrative Procedure Act does not expressly require an agency invoking this exemption to show that such procedures may result in ''definitely undesirable international consequences,'' some courts have required such a showing.[106] This process satisfies both standards.

As described above, this process is directly responsive to requests from key foreign partners—including the GOM—to provide a lawful process for Cuban nationals to enter the United States. The United States will only implement the new parole process while able to return or remove to Mexico Cuban nationals who enter without authorization across the SWB. The United States' ability to execute this process is contingent on the GOM making an independent decision to accept the return or removal of Cuban nationals who bypass this new process and enter the United States without authorization. Thus, initiating and managing this process will require careful, deliberate, and regular assessment of the GOM's responses to this independent U.S. action and ongoing, sensitive diplomatic engagements.

Delaying issuance and implementation of this process to undertake rulemaking would undermine the foreign policy imperative to act now. It also would complicate broader discussions and negotiations about migration management. For now, the GOM has indicated it is prepared to make an independent decision to accept the return or removal of Cuban nationals. That willingness could be impacted by the delay associated with a public rulemaking process involving advance notice and comment and a delayed effective date. Additionally, making it publicly known that we plan to return or remove nationals of Cuba to Mexico at a future date would likely result in an even greater surge in migration, as migrants rush to the border to enter before the process begins—which would adversely impact each country's border security and further strain their personnel and resources deployed to the border.

Moreover, this process is not only responsive to the interests of key foreign partners—and necessary for addressing migration issues requiring coordination between two or more governments—it is also fully aligned with larger and important foreign policy objectives of this Administration and fits within a web of carefully negotiated actions by multiple governments (for instance in the L.A. Declaration). It is the view of the United States that the implementation of this process will advance the Administration's foreign policy goals by demonstrating U.S. partnership and U.S. commitment to the shared goals of addressing migration through the hemisphere, both of which are essential to maintaining strong bilateral relationships.

The invocation of the foreign affairs exemption here is also consistent with Department precedent. For example, DHS published a notice eliminating an exception to expedited removal for certain Cuban nationals, which explained that the change in policy was consistent with the foreign affairs exemption because the change was central to ongoing negotiations between the two countries.[107] DHS similarly invoked the foreign affairs exemption more recently, in connection with the Venezuela parole process.[108]

Third, DHS assesses that there is good cause to find that the delay associated with implementing this process through notice-and-comment rulemaking and with a delayed effective date would be contrary to the public interest and impracticable.[109] The numbers of Cubans encountered at the SWB are already high, and a delay would greatly exacerbate an urgent border and national security challenge, and would miss a critical opportunity to reduce and divert the flow of irregular migration.[110]

Undertaking notice-and-comment rulemaking procedures would be contrary to the public interest because an advance announcement of the process would seriously undermine a key goal of the policy: it would incentivize even more irregular migration of Cuban nationals seeking to enter the United States before the process would take effect. There are urgent border and national security and humanitarian interests in reducing and diverting the flow of irregular migration.[111] It has long been recognized that agencies may use the good cause exception, and need not take public comment in advance, where significant public harm would result from the notice-and-comment

[102] 5 U.S.C. 553(b)(A); *id.* 553(d)(2).

[103] *See Lincoln* v. *Vigil,* 508 U.S. 182, 197 (1993) (quoting *Chrysler Corp.* v. *Brown,* 441 U.S. 281, 302 n.31 (1979)).

[104] 5 U.S.C. 553(a)(1).

[105] *Mast Indus.* v. *Regan,* 596 F. Supp. 1567, 1582 (C.I.T. 1984) (cleaned up).

[106] *See, e.g., Rajah* v. *Mukasey,* 544 F.3d 427, 437 (2d Cir. 2008).

[107] *See* 82 FR 4902 (Jan. 17, 2017).

[108] *See* 87 FR 63507 (Oct. 19, 2022).

[109] *See* 5 U.S.C. 553(b)(B); *id.* 553(d)(3).

[110] *See Chamber of Commerce of U.S.* v. *SEC.,* 443 F.3d 890, 908 (D.C. Cir. 2006) (''The [''good cause''] exception excuses notice and comment in emergency situations, where delay could result in serious harm, or when the very announcement of a proposed rule itself could be expected to precipitate activity by affected parties that would harm the public welfare.'' (citations omitted)).

[111] *See* 5 U.S.C. 553(b)(B).

process.[112] If, for example, advance notice of a coming price increase would immediately produce market dislocations and lead to serious shortages, advance notice need not be given.[113] A number of cases follow this logic in the context of economic regulation.[114]

The same logic applies here, where the Department is responding to exceedingly serious challenges at the border, and advance announcement of that response would significantly increase the incentive, on the part of migrants and others (such as smugglers), to engage in actions that would compound those very challenges. It is well established that migrants may change their behavior in response to perceived imminent changes in U.S. immigration policy [115] For example, as detailed above, implementation of the parole process for Venezuelans was associated with a drastic reduction in irregular migration by Venezuelans. Had the parole process been announced prior to a notice-and-comment period, it likely would have had the opposite effect, resulting in many hundreds of thousands of Venezuelan nationals attempting to cross the border before the program went into effect. Overall, the Department's experience has been that in some circumstances when public announcements have been made regarding changes in our immigration laws and procedures that would restrict access to immigration benefits to those attempting to enter the United States along the U.S.-Mexico land border, there have been dramatic increases in the numbers of noncitizens who enter or attempt to enter the United States. Smugglers routinely prey on migrants in response to changes in domestic immigration law.

In addition, it would be impracticable to delay issuance of this process in order to undertake such procedures because—as noted above—maintaining the status quo, which involves record numbers of Cuban nationals currently being encountered attempting to enter without authorization at the SWB, coupled with DHS's extremely limited options for processing, detaining, or quickly removing such migrants, would unduly impede DHS's ability to fulfill its critical and varied missions. At current rates, a delay of just a few months to conduct notice-and-comment rulemaking would effectively forfeit an opportunity to reduce and divert migrant flows in the near term, harm border security, and potentially result in scores of additional migrant deaths.

The Department's determination here is consistent with past practice in this area. For example, in addition to the Venezuelan process described above, DHS concluded in January 2017 that it was imperative to give immediate effect to a rule designating Cuban nationals arriving by air as eligible for expedited removal because ''pre-promulgation notice and comment would . . . endanger[ ] human life and hav[e] a potential destabilizing effect in the region.'' [116] DHS cited the prospect that ''publication of the rule as a proposed rule, which would signal a significant change in policy while permitting continuation of the exception for Cuban nationals, could lead to a surge in migration of Cuban nationals seeking to travel to and enter the United States during the period between the publication of a proposed and a final rule.'' [117] DHS found that ''[s]uch a surge would threaten national security and public safety by diverting valuable Government resources from counterterrorism and homeland security responsibilities. A surge could also have a destabilizing effect on the region, thus weakening the security of the United States and threatening its international relations.'' [118] DHS concluded that ''a surge could result in significant loss of human life.'' [119]

B. Paperwork Reduction Act (PRA)

Under the Paperwork Reduction Act (PRA), 44 U.S.C. chapter 35, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any new reporting requirements they impose. The process announced by this notice requires changes to two collections of information, as follows.

OMB has recently approved a new collection, Form I–134A, Online Request to be a Supporter and Declaration of Financial Support (OMB control number 1615–NEW). This new collection will be used for the Cuban parole process, and is being revised in connection with this notice, including by increasing the burden estimate. To support the efforts described above, DHS has created a new information collection that will be the first step in these parole processes and will not use the paper USCIS Form I–134 for this purpose. U.S.-based supporters will submit USCIS Form I–134A online on behalf of a beneficiary to demonstrate that they can support the beneficiary for the duration of their temporary stay in the United States. USCIS has submitted and OMB has approved a request for emergency authorization of the required changes (under 5 CFR 1320.13) for a period of 6 months. Within the next 90 days, USCIS will immediately begin normal clearance procedures under the PRA.

OMB has previously approved an emergency request under 5 CFR 1320.13 for a revision to an information collection from CBP entitled Advance Travel Authorization (OMB control number 1651–0143). In connection with the implementation of the process described above, CBP is making multiple changes under the PRA's emergency processing procedures at 5 CFR 1320.13, including increasing the burden estimate and adding Cuban nationals as eligible for a DHS established process that necessitates collection of a facial photograph in CBP

[112] *See, e.g., Mack Trucks, Inc.* v. *EPA,* 682 F.3d 87, 94–95 (D.C. Cir. 2012) (noting that the ''good cause'' exception ''is appropriately invoked when the timing and disclosure requirements of the usual procedures would defeat the purpose of the proposal—if, for example, announcement of a proposed rule would enable the sort of financial manipulation the rule sought to prevent [or] in order to prevent the amended rule from being evaded'' (cleaned up)); *DeRieux* v. *Five Smiths, Inc.,* 499 F.2d 1321, 1332 (Temp. Emer. Ct. App. 1975) (''[W]e are satisfied that there was in fact 'good cause' to find that advance notice of the freeze was 'impracticable, unnecessary, or contrary to the public interest' within the meaning of section 553(b)(B). . . . Had advance notice issued, it is apparent that there would have ensued a massive rush to raise prices and conduct 'actual transactions'— or avoid them—before the freeze deadline.'' (cleaned up)).

[113] *See, e.g., Nader* v. *Sawhill,* 514 F.2d 1064, 1068 (Temp. Emer. Ct. App. 1975) (''[W]e think good cause was present in this case based upon [the agency's] concern that the announcement of a price increase at a future date could have resulted in producers withholding crude oil from the market until such time as they could take advantage of the price increase.'').

[114] *See, e.g., Chamber of Commerce of U.S.* v. *SEC.,* 443 F.3d 890, 908 (D.C. Cir. 2006) (''The [''good cause''] exception excuses notice and comment in emergency situations, where delay could result in serious harm, or when the very announcement of a proposed rule itself could be expected to precipitate activity by affected parties that would harm the public welfare.'' (citations omitted)); *Mobil Oil Corp.* v. *Dep't of Energy,* 728 F.2d 1477, 1492 (Temp. Emer. Ct. App. 1983) (''On a number of occasions . . . this court has held that, in special circumstances, good cause can exist when the very announcement of a proposed rule itself can be expected to precipitate activity by affected parties that would harm the public welfare.'').

[115] *See, e.g.,* Tech Transparency Project, Inside the World of Misinformation Targeting Migrants on Social Media, *https://www.techtransparencyproject.org/articles/inside-world-misinformation-targeting-migrants-social-media,* July 26, 2022 (last viewed Dec. 6, 2022).

[116] Eliminating Exception to Expedited Removal Authority for Cuban Nationals Arriving by Air, 82 FR 4769, 4770 (Jan. 17, 2017).

[117] *Id.*

[118] *Id.*

[119] *Id.; accord, e.g.,* Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended, 81 FR 5906, 5907 (Feb. 4, 2016) (finding the good cause exception applicable because of similar short-run incentive concerns).

One™. OMB has approved the emergency request for a period of 6 months. Within the next 90 days, CBP will immediately begin normal clearance procedures under the PRA.

More information about both collections can be viewed at *www.reginfo.gov.*

Alejandro N. Mayorkas,

Secretary of Homeland Security.

[FR Doc. 2023–00252 Filed 1–5–23; 4:15 pm]

BILLING CODE 9110–09–P

DEPARTMENT OF HOMELAND SECURITY

Implementation of Changes to the Parole Process for Venezuelans

ACTION: Notice

SUMMARY: This notice announces that the Secretary of Homeland Security (Secretary) has authorized updates to the Parole Process for Venezuelans that was initiated in October 2022. The Venezuela process provides a safe and orderly pathway for certain individuals to seek authorization to travel to the United States to be considered for parole at an interior port of entry, contingent on the Government of Mexico (GOM) making an independent decision to accept the return or removal of Venezuelan nationals who bypass this new process and enter the United States without authorization. Pursuant to this notice, the Secretary has removed the limit of 24,000 total travel authorizations and replaced it with a monthly limit of 30,000 travel authorizations spread across this process and the separate and independent Parole Process for Cubans, Parole Process for Haitians, and Parole Process for Nicaraguans (as described in separate notices published concurrently in today's edition of the **Federal Register**). The Secretary also has updated the eligibility criteria for the Venezuela process by including an exception that will enable Venezuelans who cross without authorization into the United States at the Southwest Border (SWB) and are subsequently permitted a one-time option to voluntarily depart or voluntarily withdraw their application for admission to maintain eligibility to participate in this parole process. DHS believes that these changes are needed to ensure that the Venezuela process continues to deliver the already-realized benefits of reducing the number of Venezuelan nationals crossing our border without authorization and the surge in migration throughout the hemisphere and channels migrants into a safe and orderly process that enables them to enter the United States without making the dangerous journey to the SWB.

DATES: DHS will begin using the Form I–134A, Online Request to be a Supporter and Declaration of Financial Support, for this process on January 6, 2023. DHS will apply the changes to the process beginning on January 6, 2023.

FOR FURTHER INFORMATION CONTACT: Daniel Delgado, Acting Director, Border and Immigration Policy, Office of Strategy, Policy, and Plans, Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528–0445; telephone (202) 447–3459 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background—Venezuelan Parole Process

On October 19, 2022, DHS published a **Federal Register** Notice describing a new effort to address the high number of Venezuelans encountered at the SWB.[1] Since the announcement of that process, Venezuelans who have not availed themselves of the process, and instead entered the United States without authorization, have been expelled to Mexico pursuant to the Centers for Disease Control and Prevention (CDC) Title 42 public health Order or, if not expelled, processed for removal or the initiation of removal proceedings.

Once the Title 42 public health Order is lifted, DHS will no longer expel noncitizens to Mexico, but rather all noncitizens will be processed pursuant to DHS's Title 8 immigration authorities. The United States' continued operation of this process will continue to be contingent on the GOM's independent decision to accept the return of removal of individuals, including under Title 8 authorities.

Eligibility To Participate in the Process

As described in the October 19 **Federal Register** Notice, the Department of Homeland Security (DHS) implemented a process—modeled on the successful Uniting for Ukraine (U4U) parole process—for certain Venezuelan nationals to lawfully enter the United States in a safe and orderly manner. To be eligible, individuals must have a supporter in the United States who agrees to provide financial support, such as housing and other needs; must pass national security and public safety vetting; and must agree to fly at their own expense to an interior U.S. port of entry (POE), rather than entering at a land POE.

Individuals are ineligible if they have been ordered removed from the United States within the prior five years or have entered unauthorized into the United States, Mexico, or Panama after October 19, 2022. Venezuelan nationals also are generally ineligible if they are a permanent resident or dual national of any country or hold refugee status in any country other than Venezuela, though per the conforming change described below, they will now remain eligible to be considered for parole under this process if DHS operates a similar parole process for nationals of that other country. Only those who meet all specified criteria will be eligible to receive advance authorization to travel to the United States and be considered for parole, on a case-by-case basis, under this process. The process originally limited the number of Venezuelans who could receive travel authorization to 24,000.

II. Assessment of Venezuela Parole Process to Date

The success of the Venezuela process demonstrates that combining a clear and meaningful consequence for unauthorized entry along the SWB with a significant incentive for migrants to wait where they are and use a lawful process to come to the United States can change migratory flows. Within a week of the October 12, 2022 announcement of that process, the number of Venezuelans encountered at the SWB fell from over 1,100 per day to under 200 per day, and as of the week ending December 4, to an average of 86 per day.[2] The new process and accompanying consequence for unauthorized entry also led to a precipitous decline in Venezuelan irregular migration[3] throughout the Western Hemisphere. The number of Venezuelans attempting to enter Panama through the Darién was down from 40,593 in October 2022 to just 668 in November.[4] DHS provided the new parole process for Venezuelans who are backed by supporters in the United States to come to the United States by

[1] 87 FR 63507 (Oct. 19, 2022).

[2] Office of Immigration Statistics (OIS) analysis of data pulled from CBP Unified Immigration Portal (UIP) December 5, 2022. Data are limited to USBP encounters to exclude those being paroled in through ports of entry.

[3] In this notice, irregular migration refers to the movement of people into another country without authorization.

[4] Servicio Nacional de Migración de Panamá, Irregulares en Tránsito Frontera Panamá-Colombia 2022, *https://www.migracion.gob.pa/images/img2022/PDF/IRREGULARES_%20POR_%20DARI%C3%89N_NOVIEMBRE_2022.pdf* (last viewed Dec. 11, 2022).

flying to interior POEs—thus obviating the need for them to make the dangerous journey to the SWB. Meanwhile, the GOM for the first time made an independent decision to accept the returns of Venezuelans who crossed the SWB without authorization pursuant to the Title 42 public health Order, which imposed a consequence on Venezuelans who sought to come to the SWB rather than avail themselves of the newly announced parole process. With the vast majority of those encountered returned to Mexico, fewer releases have freed up DHS resources that would otherwise be used to process these individuals; this has also reduced the number of individuals state and local governments, as supported by civil society, have had to receive and assist.

The effects have been felt throughout the Western Hemisphere, not just in the United States. Thousands of Venezuelans who had already crossed the Darién have flown back to Venezuela on voluntary flights organized by the governments of Mexico, Guatemala, and Panama, as well as civil society.[5] Other migrants who were about to enter the Darién have turned around and headed back south.[6] Still others who were intending to migrate north are staying where they are to apply for this lawful process, rather than make the dangerous journey to the SWB.[7]

DHS has seen strong interest in this parole process. As of December 27, 2022, DHS had authorized travel for more than 15,700 Venezuelan beneficiaries, already more than half of the available number of travel authorizations.[8] Of those authorized to travel to the United States, more than 10,600 have arrived and been paroled into the country.[9] More than 3,600 of those Venezuelans who have flown into the United States and were paroled through this process arrived from Colombia; another 2,300 came from Venezuela, 1,500 from Mexico, and 3,100 from other countries. Those figures show that the process is reaching both people in Venezuela and Colombia *before* they seek to irregularly migrate, and those who are displaced in transit countries, like Mexico.[10]

III. Changes

Given the early success of the process, the Secretary has authorized two changes to the process to ensure its continued viability, particularly as DHS prepares for an eventual transition from Title 42 processing to full Title 8 processing at the border.[11]

A. Removal of the 24,000 Limit on Travel Authorizations and Replacement With a 30,000 Monthly Limit Spread Across Separate and Independent Parole Processes

The process announced in the October 19 **Federal Register** Notice was subject to a numerical limit. Demand for the Venezuela process has far exceeded the 24,000 limit set in the first **Federal Register** Notice. In just two months of operation, DHS received thousands of applications from supporters and has already approved well more than half of the available travel authorizations. Were DHS to reach the numerical limit, prospective migrants would no longer be eligible for this process, which serves as a meaningful alternative to irregular migration. DHS anticipates that we would then see increased irregular migration of Venezuelans.

Accordingly, the Secretary has removed the 24,000 numerical limit on travel authorizations and replaced it with a monthly limit of 30,000 travel authorizations in the aggregate spread across this process and the separate and independent Parole Process for Cubans, Parole Process for Haitians, and Parole Process for Nicaraguans (as described in separate notices published concurrently in today's edition of the **Federal Register**). This change gives DHS the flexibility to continue the process for Venezuelans, thereby providing more certainty to the public and supporting partners. It also preserves the flexibility to extend or terminate the process, as the circumstances warrant. DHS will continue to evaluate this monthly limit and make adjustments if needed over time.

B. Updated Eligibility Criteria

Following the GOM's independent decision to accept returns of Venezuelans, DHS began expelling Venezuelans who are encountered after entering the United States without authorization, pursuant to the Title 42 public health Order. Currently, a Venezuelan (or qualifying immediate family member) is ineligible to participate in the parole process if, among other things, they crossed irregularly into the United States after October 19, 2022—regardless of whether they were expelled, ordered removed, or departed voluntarily.[12]

After the Title 42 Order ceases to be in effect, DHS will resume Title 8 immigration processing of all individuals, including Venezuelans. Pursuant to Title 8, noncitizens who have entered the United States without authorization may be permitted to voluntarily depart pursuant to Immigration and Nationality Act (INA) 240B, 8 U.S.C. 1229c, may be permitted to voluntarily withdraw their application for admission pursuant to INA 235(a)(4), 8 U.S.C. 1225(a)(4), or may be ordered removed, regardless of whether Title 42 remains in effect.

Individuals continue to be generally ineligible for consideration for parole pursuant to this process if they have crossed into the United States without authorization between POEs along the SWB since October 20, 2022. There will now be the following exception: individuals who have crossed without authorization into the United States after December 20, 2022, and have been permitted a single instance of voluntary departure pursuant to INA 240B, 8 U.S.C. 1229c, or withdrawal of their application for admission pursuant to INA 235(a)(4), 8 U.S.C. 1225(a)(4), will remain eligible to participate in the parole process. If such an individual crossed without authorization between POEs along the SWB from October 20, 2022 through December 20, 2022, they would remain ineligible to participate and the exception would not apply. Permitting Venezuelan nationals to voluntarily depart or withdraw their application for admission one time and still be considered for parole through the process will reduce the burden on DHS personnel and resources that would otherwise be required to obtain and execute a final order of removal. This includes reducing strain on detention and removal flight capacity, officer resources, and reducing costs associated with detention and monitoring.

[5] La Prensa Latina Media, *More than 4,000 migrants voluntarily returned to Venezuela from Panama, https://www.laprensalatina.com/more-than-4000-migrants-voluntarily-returned-to-venezuela-from-panama/,* Nov. 9 2022 (last viewed Dec. 8, 2022).

[6] Voice of America, *U.S. Policy Prompts Some Venezuelan Migrants to Change Route, https://www.voanews.com/a/us-policy-prompts-some-venezuelan-migrants-to-change-route/6790996.html,* Oct. 14, 2022 (last viewed Dec. 8, 2022).

[7] Axios, *Biden's new border policy throws Venezuelan migrants into limbo, https://www.axios.com/2022/11/07/biden-venezuela-border-policy-darien-gap,* Nov. 7 2022 (last viewed Dec. 8, 2022).

[8] Department of Homeland Security, Daily Venezuela Report, Dec. 27, 2022.

[9] *Id.*

[10] *Id.*

[11] The Secretary authorized the changes following considerations reflected in the Secretary's decision memorandum dated December 22, 2022. *See* Memorandum for the Secretary from the Under Secretary for Strategy, Policy, and Plans, Acting Commissioner of U.S. Customs and Border Protection, and Director of U.S. Citizenship and Immigration Services, Updates to the Parole Process for Certain Venezuelan Nationals (Dec. 22, 2022).

[12] 87 FR 63507 (Oct. 19, 2022).

The Secretary has also approved a conforming change to provide that a Venezuelan national who is a permanent resident or dual national of any country or holds refugee status in any country other than Venezuela remains eligible to be considered for parole under this process if DHS operates a similar parole process for nationals of that other country. All other eligibility requirements described in the October 19, 2022 Notice remain the same.

These changes are responsive to our multilateral commitments to address irregular migration throughout the Hemisphere. In this case, the United States is making two changes to this process that will support our commitment to creating additional lawful pathways. For its part, the GOM has made an independent decision to accept the return or removal, including under Title 8, of Venezuelan nationals who bypass this new process and enter the United States without authorization. The United States' continued operation of this process is contingent on the GOM's independent decision in this regard.

C. Scope, Termination, and No Private Rights

The Secretary retains the sole discretion to terminate the Parole Process for Venezuelans at any point.The number of travel authorizations granted under this process shall be spread across this process and the separate and independent Parole Process for Cubans, Parole Process for Haitians, and Parole Process for Nicaraguans (as described in separate notices published concurrently in today's edition of the **Federal Register**), and shall not exceed 30,000 each month. Each of these processes operates independently, and any action to terminate or modify any of the other processes will have no bearing on the criteria for or independent decisions with respect to this process.

This process is being implemented as a matter of the Secretary's discretion. It is not intended to and does not create any rights, substantive or procedural, enforceable by any party in any matter, civil or criminal.

IV. Regulatory Requirements

A. Administrative Procedure Act

The October 19 **Federal Register** Notice describing this process explained that this process is exempt from notice-and-comment rulemaking requirements because (1) the process is a general statement of policy,[13] (2) the process pertains to a foreign affairs function of the United States,[14] and (3) even if notice-and-comment were required, DHS would for good cause find that the delay associated with implementing these changes through notice-and-comment rulemaking would be impracticable and contrary to the public interest because of the need for coordination with the GOM, and the urgent border and national security and humanitarian interests in reducing and diverting the flow of irregular migration.[15] The changes described in this Notice are amenable to immediate issuance and implementation for the same reasons.

First, these changes relate to a general statement of policy,[16] *i.e.,* a ''statement[] issued by an agency to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.'' [17] As section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A), provides, parole decisions are made by the Secretary of Homeland Security ''in his discretion.''

Second, even if these changes were considered to be a legislative rule that would normally be subject to requirements for notice-and-comment rulemaking and a delayed effective date, these changes—like the implementation of the process itself—pertain to a foreign affairs function of the United States, as described in the October 19 notice, and are directly responsive to ongoing conversations with, and requests from, foreign partners.[18] Specifically, the GOM has urged the United States to consider lifting the 24,000 limit,[19] which would allow more Venezuelans to participate in and engage the process and further disincentivize irregular migration, enhancing the security of both of our borders. Delaying implementation of these changes to conduct notice-and-comment rulemaking would directly implicate the GOM's independent decision to accept returns, including under Title 8 processes, and produce undesirable international consequences. Absent these changes, DHS would soon reach the 24,000 cap and GOM would no longer accept the returns of Venezuelan nationals. Thus, without these changes, DHS would no longer have the ability to return Venezuelan nationals to Mexico, and the Venezuela process would no longer be viable. That would then, in all likelihood, lead to another surge in migration of Venezuelan nationals throughout the hemisphere and to our border.

Finally, even if notice-and-comment and a delayed effective date were required, DHS would for good cause find that the delay associated with implementing these changes through notice-and-comment rulemaking would be impracticable and contrary to the public interest because of the need for coordination with the GOM, and the urgent border and national security and humanitarian interests in reducing and diverting the flow of irregular migration.[20] As noted above, absent immediate action, there is a risk that DHS meets the 24,000 cap, which would in turn cause the GOM to no longer accept the returns of Venezuelan nationals and end the success of the parole process to date at reducing the number of Venezuelan nationals encountered at the border.

B. Paperwork Reduction Act (PRA)

Under the Paperwork Reduction Act (PRA), 44 U.S.C. chapter 35, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any new reporting requirements they impose. The process announced by this notice involves three collections of information, as follows.

In connection with the process for Venezuelans, OMB has previously approved a revision to USCIS Form I–134, *Declaration of Financial Support* (OMB control number 1615–0014) under the PRA's emergency processing procedures at 5 CFR 1320.13. OMB has recently approved a new collection, Form I–134A, Online Request for Consideration to be a Supporter and Declaration of Financial Support (OMB control number 1615–NEW). This new collection will now be used for the Venezuela parole process and is being revised in connection with this notice, including by increasing the burden estimate. USCIS has submitted and OMB has approved a request for emergency authorization of the required changes (under 5 CFR 1320.13) for a period of 6 months. Within the next 90 days, USCIS will immediately begin normal clearance procedures under the PRA.

OMB has also previously approved an emergency request under 5 CFR 1320.13 for a revision to an information

[13] 5 U.S.C. 553(b)(A); *see also id.* 553(d)(2).

[14] 5 U.S.C. 553(a)(1).

[15] 5 U.S.C. 553(b)(B).

[16] 5 U.S.C. 553(b)(A); *id.* 553(d)(2).

[17] *Lincoln* v. *Vigil,* 508 U.S. 182, 197 (1993) (quoting *Chrysler Corp.* v. *Brown,* 441 U.S. 281, 302 n.31 (1979)).

[18] 5 U.S.C. 553(a)(1).

[19] *See* Dallas Morning News, *Ahead of Title 42's end, U.S.-Mexico negotiations called 'intense,' 'round-the-clock' https://www.dallasnews.com/news/2022/12/13/ahead-of-title-42s-end-us-mexico-negotations-called-intense-round-the-clock/,* Dec. 13, 2022 (last viewed Dec. 14, 2022).

[20] *See* 5 U.S.C. 553(b)(B); *id.* 553(d)(3).

collection from CBP entitled Advance Travel Authorization (OMB control number 1651–0143). In connection with the changes described above, CBP is making further changes under the PRA's emergency processing procedures at 5 CFR 1320.13, including increasing the burden estimate. OMB has approved the emergency request for a period of 6 months. Within the next 90 days, CBP will immediately begin normal clearance procedures under the PRA.

More information about these collections can be viewed at *www.reginfo.gov.*

Alejandro N. Mayorkas,

Secretary of Homeland Security.

[FR Doc. 2023–00253 Filed 1–5–23; 4:15 pm]

BILLING CODE 9110–09–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4678–DR; Docket ID FEMA–2022–0001]

West Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–4678–DR), dated November 28, 2022, and related determinations.

DATES: The declaration was issued November 28, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 28, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of West Virginia resulting from severe storms, flooding, landslides, and mudslides during the period of July 12 to July 13, 2022, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Jeffrey L. Jones, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of West Virginia have been designated as adversely affected by this major disaster:

McDowell County for Public Assistance.

All areas within the State of West Virginia are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–00177 Filed 1–6–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4677–DR; Docket ID FEMA–2022–0001]

South Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Carolina (FEMA–4677–DR), dated November 21, 2022, and related determinations.

DATES: The declaration was issued November 21, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 21, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of South Carolina resulting from Hurricane Ian during the period of September 25 to October 4, 2022, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of South Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kevin A. Wallace, Sr., of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of South Carolina have been designated as adversely affected by this major disaster:

Charleston, Georgetown, and Horry Counties for Individual Assistance.

Berkeley, Charleston, Clarendon, Georgetown, Horry, Jasper, and Williamsburg Counties for Public Assistance.

All areas within the State of South Carolina are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–00176 Filed 1–6–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4675–DR; Docket ID FEMA–2022–0001]

Seminole Tribe of Florida; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Seminole Tribe of Florida (FEMA–4675–DR), dated September 30, 2022, and related determinations.

DATES: This amendment was issued December 9, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Seminole Tribe of Florida is hereby amended to include permanent work under the Public Assistance program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 30, 2022.

The Seminole Tribe of Florida for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–00175 Filed 1–6–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4675–DR; Docket ID FEMA–2022–0001]

Seminole Tribe of Florida; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Seminole Tribe of Florida (FEMA–4675–DR), dated September 30, 2022, and related determinations.

DATES: This amendment was issued November 28, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 28, 2022, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), in a letter to Deanne Criswell, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in certain areas of the Seminole Tribe of Florida resulting from Hurricane Ian beginning on September 23, 2022, and continuing, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act'').

Therefore, I amend my declaration of September 30, 2022, to authorize Federal funds for debris removal and emergency protective measures, including direct Federal assistance, under the Public Assistance program at 100 percent of the total eligible costs for an additional 30-day period through November 22, 2022.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–00174 Filed 1–6–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4673–DR; Docket ID FEMA–2022–0001]

Florida; Amendment No. 13 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–4673–DR), dated September 29, 2022, and related determinations.

DATES: This amendment was issued November 28, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 28, 2022, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), in a letter to Deanne Criswell, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in the State of Florida resulting from Hurricane Ian during the period of September 23 to November 4, 2022, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act'').

Therefore, I amend my declarations of September 29, 2022 and October 4, 2022, to authorize Federal funds for debris removal and emergency protective measures, including direct Federal assistance, under the Public Assistance program at 100 percent of the total eligible costs for an additional 15-day period through December 7, 2022.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–00173 Filed 1–6–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4671–DR; Docket ID FEMA–2022–0001]

Puerto Rico; Amendment No. 16 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico (FEMA–4671–DR), dated September 21, 2022, and related determinations.

DATES: This amendment was issued November 21, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 21, 2022, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), in a letter to Deanne Criswell, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in certain areas of the Commonwealth of Puerto Rico resulting from Hurricane Fiona during the period of September 17 to September 21, 2022, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act'').

Therefore, I amend my declarations of September 21, 2022, and October 20, 2022, to authorize Federal funds for all categories of Public Assistance at 90 percent of total eligible costs, except assistance previously approved at 100 percent.

This adjustment to state and local cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under the law. The Robert T. Stafford Disaster Relief and Emergency Assistance Act specifically prohibits a similar adjustment for funds provided for Other Needs Assistance (Section 408) and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–00172 Filed 1–6–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3589–EM; Docket ID FEMA–2022–0001]

New York; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of New York (FEMA–3589–EM), dated November 20, 2022, and related determinations.

DATES: This amendment was issued December 9, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective November 21, 2022.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036,

Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–00171 Filed 1–6–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3589–EM; Docket ID FEMA–2022–0001]

New York; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New York (FEMA–3589–EM), dated November 20, 2022, and related determinations.

DATES: The declaration was issued November 20, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 20, 2022, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of New York resulting from a severe winter storm and snowstorm beginning on November 18, 2022, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of New York.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Lai Sun Yee, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of New York have been designated as adversely affected by this declared emergency:

Cattaraugus, Chautauqua, Erie, Genesee, Jefferson, Lewis, Niagara, Oneida, Oswego, St. Lawrence, and Wyoming Counties for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–00170 Filed 1–6–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3587–EM; Docket ID FEMA–2022–0001]

Florida; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Florida (FEMA–3587–EM), dated November 8, 2022, and related determinations.

DATES: This amendment was issued December 9, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective November 30, 2022.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–00169 Filed 1–6–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–70; OMB Control No. 2577–0275]

30-Day Notice of Proposed Information Collection: Public/Private Partnerships for the Mixed-Finance Development of Public Housing Units

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* February 8, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities.

To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on July 28, 2022, at 87 FR 45352.

A. Overview of Information Collection

Title of Proposal: Public/Private Partnerships for the Mixed-Finance Development of Public Housing Units.

OMB Control Number: 2577–0275.

Type of Request: Reinstatement with change of a currently approved collection.

Form Number: HUD–50156, HUD–50157, HUD–50158, HUD–50159, HUD–50160, HUD–50161, HUD–52190. This PRA also includes two new forms: The Mixed Finance Amendment to the Annual Contributions Contact and the Mixed Finance Development Proposal for Faircloth to RAD Transactions.

Description of the need for the information and proposed use: The Quality Housing and Work Responsibility Act of 1998 (Pub. L. 195–276, approved October 21, 1998), also known as the Public Housing Reform Act, created Section 35 of the U.S. Housing Act of 1937, 42 U.S.C. 1437z–7.1437. Section 35 allows Public Housing Authorities (PHAs) to own, operate, assist, or otherwise participate in the development and operation of mixed-finance projects. Mixed-finance development refers to the development or rehabilitation of public housing, where the public housing units are owned in whole or in part by an entity other than a PHA. Prior to this, all public housing had to be developed and owned by a PHA. However, Section 35 allows PHAs to provide Section 9 Capital Funds and Operating Funds to mixed-finance projects, which are also financially assisted by private financing and other resources including tax credit equity, private mortgages and other federal, state, or local funds. Section 35 also allows non-PHA owner entities to own and operate mixed-finance projects that contain only public housing units or both public housing and non-public housing units. Mixed-finance real estate development or rehabilitation transactions also help to extend public housing appropriations for housing development and to support the development of mixed-income housing in which public housing residents are anonymously mixed in with affordable and market rate housing residents.

In order to approve the development of mixed-finance projects, HUD collects certain information from each PHA/Ownership Entity. Under current regulations, HUD collects and reviews the essential documents included in this Information Collection Request (ICR) in order to determine approval. After approval is given and the documents are recorded by the associated county, HUD collects the recorded versions of the documents in this ICR, along with financing and legal agreements that the PHA/owner entity has with HUD and with third-parties in connection with that mixed-finance project. This includes unique legal documents along with standardized forms and ''Certifications and Assurances'' which are not exempted under PRA.

The regulations that govern the processing of mixed-finance public housing projects are at 24 CFR part 905, subpart F. In accordance with these regulations, HUD collects information to ensure that the proposed mixed-finance development has sufficient funds to reach completion; will remain financially viable during its operating period; will follow HUD's legal and programmatic guidelines for housing project development or rehabilitation, ownership, and use restrictions; and will preserve HUD's rights to the project during its HUD-required affordability period. Information on HUD-prescribed forms and in HUD-prescribed contracts and agreements, along with other supplemental information called for in 24 CFR part 905, provides HUD with sufficient information to determine whether the project should be approved and whether funds should or should not be reserved or a contractual commitment made. Specifically, regulations at 24 CFR 905.606, ''Development Proposal,'' state that a Mixed-finance Development Proposal (Proposal) must be submitted to HUD to facilitate approval of the development of public housing. The subsection also lists the information that is required in the Proposal. The documentation required is submitted using the collection documents (ICs) in this ICR.

HUD's Mixed-finance Development Proposal, and associated documents, can also be used to facilitate the approval of non-public housing developments whose development and/or operations are supported with Section 9 funds. For instance, Choice Neighborhoods grantees must use the Mixed-Finance Development Proposal to obtain HUD approval of their proposed housing development projects, even if those projects do not include public housing units. Moving to Work (MTW) agencies can also use this form to secure HUD approval of local, non-traditional development projects; however, it is not mandatory for them to do so. The Proposal notes requirements that apply to Choice Neighborhoods grantees and MTW agencies specifically. A PHA that is refinancing an existing Mixed-Finance project can also use the Proposal to secure HUD approval.

This ICR was last updated in FY 2018. Since that time, minor updates have been made to the Proposal to clarify instructions for grantees. The HUD Declaration of Trust/Declaration of Restrictive Covenants (DOT/DORC), which was previously approved under a separate PRA, is also being included in this submission, along with the Mixed Finance Amendment to the Annual Consolidated Contract. HUD is also including a revised version of the Mixed Finance Development Proposal that can be used for Faircloth to RAD transactions and that includes specific requirements for those projects. The list of documents being requested in this ICR have also been updated to reflect current practices: A couple documents no longer collected as part of the Mixed Finance review process have been removed. This ICR also adds the Ground Lease, Memorandum of Ground Lease, Management Agreement, Management Plan and Sample Tenant Lease to the list of evidentiary documents collected via this ICR. These documents were previously grouped together in this ICR under the category of ''Mixed Finance

Evidentiary Documents.'' However, now the documents are being listed individually to provide greater clarity. Finally, the number of respondents has been adjusted since the last time this ICR was updated to more accurately reflect the current number of annual submissions.

Members of affected public: Public Housing Agencies, Developers.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Form/document	Number of respondents	Frequency	Total responses	Hours per response	Total hours	Cost per hour	Total cost
HUD–50156: Mixed-Finance Development Proposal Calculator	40	1	40	4	160	$50	$8,000
HUD–50157: Mixed-Finance Development Proposal	40	1	40	16	640	50	32,000
HUD–XXXXX: Mixed-Finance Development Proposal for Faircloth to RAD Transactions	15	1	15	16	240	50	12,000
HUD–XXXXX: Mixed-Finance Amendment to the Annual Contributions Contract	40	1	40	24	960	50	48,000
HUD–50158: Mixed-Finance Homeownership Certifications and Assurances	10	1	10	0.25	3	50	125
HUD–50059: Mixed-Finance Homeownership Term Sheet	10	1	10	16	160	50	8,000
HUD–50160: Mixed-Finance and Homeownership Pre-Funding Certifications and Assurances	10	1	10	0.25	3	50	125
HUD–50161: Mixed-Finance Certifications and Assurances	40	1	40	0.25	10	50	500
HUD 52190: Mixed-Finance Declaration of Restrictive Covenants	40	1	40	0.25	10	250	2,500
UNIQUE LEGAL DOCUMENTS: Management Plan, Management Agreement and Sample Tenant Lease	40	1	40	15	600	250	150,000
UNIQUE LEGAL DOCUMENT: Regulatory and Operating Agreement	40	1	40	8	320	250	80,000
UNIQUE LEGAL DOCUMENTS: Ground Lease and Memorandum of Ground Lease	40	1	40	24	960	250	240,000
UNIQUE LEGAL DOCUMENT: ATLA Survey	40	1	40	12	480	50	24,000
UNIQUE LEGAL DOCUMENT: Mixed-Finance Legal Opinion	40	1	40	1	40	250	10,000
UNIQUE LEGAL DOCUMENT: Mixed-Finance Final Title Policy	40	1	40	16	640	250	160,000
UNIQUE LEGAL DOCUMENTS: Mixed-Finance Homeownership Addendum	10	1	10	16	160	250	40,000
UNIQUE LEGAL DOCUMENT: Mixed-Finance Homeownership Declaration of Restrictive Covenants	10	1	10	0.25	3	50	125
Totals	505	.....	505	169.25	5,388	.....	815,375

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–00125 Filed 1–6–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–74; OMB Control No.: 2502–0485]

30-Day Notice of Proposed Information Collection: Congregate Housing Services Program

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* February 8, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call,

please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 7, 2022 at 87 FR 54711.

A. Overview of Information Collection

Title of Information Collection: Congregate Housing Services Program.

OMB Approval Number: 2502–0485.

Type of Request: Reinstatement, without change, of previously approved collection for which approval has expired.

Form Number: SF–424, SF–425, HUD–90006, HUD–90198, HUD–91180–A, HUD–91178–A.

Description of the need for the information and proposed use: Completion of the Annual Report by grantees provides HUD with essential information about whom the grant is serving and what sort of services the beneficiaries receive using grant funds.

The Summary Budget and the Annual Program Budget make up the budget of the grantee's annual extension request. Together the forms provide itemized expenses for anticipated program costs and a matrix of budgeted yearly costs. The budget forms show the services funded through the grant and demonstrate how matching funds, participant fees, and grant funds will be used in tandem to operate the grant program. Field staff approve the annual budget and request annual extension funds according to the budget. Field staff can also determine if grantees are meeting statutory and regulatory requirements through the evaluation of this budget.

HUD will use the Payment Voucher to monitor use of grant funds for eligible activities over the term of the grant. The Grantee may similarly use the Payment Voucher to track and record their requests for payment reimbursement for grant-funded activities.

Respondents: Non-profit institutions.

Estimated Number of Respondents: 49.

Estimated Number of Responses: 392.

Frequency of Response: Semi-annually to annually.

Average Hours per Response: 2.

Total Estimated Burdens: 613.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–00127 Filed 1–6–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–73; OMB Control No.: 2502–0178]

30-Day Notice of Proposed Information Collection: Management Reviews of Multifamily Housing Programs, HUD–9834

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* February 8, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on June 17, 2022 at 87 FR 36537.

A. Overview of Information Collection

Title of Information Collection: Management Review for Multifamily Housing Projects.

OMB Approval Number: 2502–0178.

Type of Request: Reinstatement, without change, of previously approved collection for which approval has expired.

Form Number: HUD–9834.

Description of the need for the information and proposed use: This information collection is used by HUD, by Mortgagees and by Contract Administrators (CAs) to evaluate the quality of project management; determine the causes of project problems; devise corrective actions to stabilize projects and prevent defaults; and to ensure that fraud, waste and mismanagement are not problems for the community. The information collected also supports enforcement

actions when owners fail to implement corrective actions. ''HUD is currently engaged in rule making that would reduce the frequency of MORs for high-performing properties and consequently reduce the estimated total burden hours for this Collection. Changes to required frequencies for regularly-scheduled MORs are anticipated to be completed with publication of a final rule anticipated in this year, 2022.''

Respondents: Business or other for-profit.

Estimated Number of Respondents: 27,127.

Estimated Number of Responses: 27,127.

Frequency of Response: Annually.

Average Hours per Response: 8.

Total Estimated Burden: 217,127.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–00126 Filed 1–6–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX23LR000F60100; OMB Control Number 1028–0070/Renewal]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Consolidated Consumers' Report

AGENCY: Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing to renew an Information Collection.

DATES: Interested persons are invited to submit comments on or before February 8, 2023.

ADDRESSES: Send your comments on this Information Collection Request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0070 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Elizabeth S. Sangine by email at *escottsangine@usgs.gov,* or by telephone at 703–648–7720. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *https://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provides the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on September 08, 2022 (87 FR 55033). We did not receive any public comments in response to that notice.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comments addressing the following issues: (1) is the collection necessary to the proper functions of the USGS minerals information mission; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how the USGS might enhance the quality, utility, and clarity of the information to be collected; and (5) how the USGS might minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: Respondents to this form supply the USGS with domestic consumption data for 12 metals and ferroalloys, some of which are considered strategic and critical, to assist in determining Defense National Stockpile Center goals. These data and derived information will be published as chapters in USGS Minerals Yearbooks, monthly USGS Mineral Industry Surveys, annual USGS Mineral Commodity Summaries, and special publications for use by Government agencies, industry education programs, and the general public.

Title of Collection: Consolidated Consumers' Report.

OMB Control Number: 1028–0070.

Form Number: USGS Form 9–4117–MA.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Business or Other For-Profit Institutions: U.S. nonfuel minerals consumers.

Total Estimated Number of Annual Respondents: 259.

Total Estimated Number of Annual Responses: 1,425.

Estimated Completion Time per Response: 45 minutes.

Total Estimated Number of Annual Burden Hours: 1,069.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Total Estimated Annual Non-Hour Burden Cost: There are no ''non-hour cost'' burdens associated with this ICR.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authorities for this action are the PRA (44 U.S.C. 3501 *et seq.*), the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1601 *et seq.*), the National Mining and Minerals Policy Act of 1970 (30 U.S.C. 21(a)), and the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 *et seq.*).

Steven Fortier,

Director, National Minerals Information Center, U.S. Geological Survey.

[FR Doc. 2023–00136 Filed 1–6–23; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2012–0006; DS63644000 DRT000000.CH7000 223D1113RT]

Agency Information Collection Activities: Federal Oil and Gas Valuation; OMB Control Number 1012–0005

AGENCY: Office of Natural Resources Revenue (''ONRR''), Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (''PRA''), ONRR is proposing to renew an information collection. Through this Information Collection Request (''ICR''), ONRR seeks renewed authority to collect information necessary to (1) verify proper reporting and payment of royalties and other amounts due pursuant to Federal oil and gas leases; (2) determine requests for prepayment or accounting and auditing relief for certain marginal properties; and (3) determine requests to exceed transportation and processing allowance limits. ONRR uses form ONRR–4393 (Request to Exceed Regulatory Allowance Limitation) as part of these information collection requirements.

DATES: You must submit your written comments on or before February 8, 2023.

ADDRESSES: All comment submissions must (1) reference ''OMB Control Number 1012–0005'' in the subject line; (2) be sent to ONRR before the close of the comment period listed under **DATES**; and (3) be sent using the following method:

- *Electronically via the Federal eRulemaking Portal:* Please visit *https://www.regulations.gov.* In the Search Box, enter the Docket ID Number for this ICR renewal (''ONRR–2012–0006'') and click ''search'' to view the publications associated with the docket folder. Locate the document with an open comment period and click the ''Comment Now!'' button. Follow the prompts to submit your comment prior to the close of the comment period.

Docket: To access the docket folder to view the ICR **Federal Register** publications, go to *https://www.regulations.gov* and search ''ONRR–2012–0006'' to view renewal notices recently published in the **Federal Register**, publications associated with prior renewals, and applicable public comments received for this ICR. ONRR will make the comments submitted in response to this notice available for public viewing at *https://www.regulations.gov.*

OMB ICR Data: OMB also maintains information on ICR renewals and approvals. You may access this information at *https://www.reginfo.gov/public/do/PRASearch.* Please use the following instructions: Under the ''OMB Control Number'' heading enter ''1012–0005'' and click the ''Search'' button located at the bottom of the page. To view the ICR renewal or OMB approval status, click on the latest entry (based on the most recent date). On the ''View ICR—OIRA Conclusion'' page, check the box next to ''All'' to display all available ICR information provided by OMB.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, please contact Peter Christnacht, Royalty Valuation Guidance, ONRR, by email at *Peter.Christnacht@onrr.gov* or by telephone at (303) 231–3651. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: Pursuant to the PRA, 44 U.S.C. 3501, *et seq.,* and 5 CFR 1320.5, all information collections, as defined in 5 CFR 1320.3, require approval by OMB. ONRR may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

As part of ONRR's continuing effort to reduce paperwork and respondent burdens, ONRR is inviting the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information in accordance with the PRA and 5 CFR 1320.8(d)(1). This helps ONRR to assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand ONRR's information collection requirements and provide the requested data in the desired format.

ONRR is especially interested in public comments addressing the following:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(2) The accuracy of ONRR's estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected.

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

As required in 5 CFR 1320.8(d), ONRR published a 60-day notice, for review and comment, in the **Federal Register** on May 26th, 2022 (87 FR 32050). ONRR received two comments from *www.regulations.gov.*

1. Comment From United Tribal Nations Organization

Comment: All Ongwhehonwhe, Native American people are to receive Royalties from all assets, also the rights to their inherited lands, No nation shall have restricted lands/federal trust!! No non-natives are to have any claim to any resources as these all belong to the Ongwhehonwhe, The Original People of these lands.

ONRR Response: ONRR appreciates the comment and feedback, however this Information Collection Request is related to Federal lands, not Tribal lands.

Comment From Anonymous

Comment: I agree with the content of this Information Collection Request.

ONRR Response: ONRR appreciates the comment and feedback.

ONRR acknowledged and provided responses to all commenters accordingly.

Comments that you submit in response to this 30-day notice are a matter of public record. ONRR will include or summarize each comment in its request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask ONRR in your comment to withhold your personal identifying information from public review, ONRR cannot guarantee that it will be able to do so.

(a) Abstract—General Information

ONRR reviews and audits the reporting and payment of royalties and other amounts due to the United States pursuant to Federal oil and gas leases. *See* U.S. Department of the Interior Departmental Manual, 112 DM 34.1 (Sept. 9, 2020). ONRR's responsibilities include valuing oil and gas for royalty purposes, evaluating claimed transportation and processing allowances, and granting royalty prepayment, accounting, and other relief for marginal properties in appropriate circumstances. ONRR collects the information covered by this ICR for these purposes. ONRR shares information with the Bureau of Land Management, Bureau of Indian Affairs, Bureau of Safety and Environmental Enforcement, Bureau of Ocean Energy Management, and State governments for their land and lease management responsibilities.

(b) Federal Oil and Gas Royalties and Valuation

Title 30 CFR part 1202—Royalties, subparts B and C, and 30 CFR part 1206—Product Valuation, subparts C and D, require a lessee to provide certain information necessary to calculate royalties due to the United States. Information collected under these subparts is used for oil and gas valuation, calculating and allocating transportation and processing allowances, determining location and quality differentials, and allocating residue gas and gas plant products to leases. *See* §§ 1206.102, 1206.108, 1206.110, 1206.113, 1206.141, 1206.142, 1206.148, 1206.150, 1206.152 to 1206.154, 1206.160, and 1206.161.

Some information collected under parts 1202 and 1206 is submitted on form ONRR–2014 (Report of Sales and Royalty Remittance). This ICR does not include burden hours for submitting information on form ONRR–2014 because those burden hours are addressed in ONRR's ICR 1012–0004 (Royalty and Production Reporting). *See* Agency Information Collection Activities; Royalty and Production Reporting, 87 FR 3300 (January 21, 2022).

(c) Accounting and Auditing Relief for Marginal Properties

Title 30 U.S.C 1726 and 30 CFR part 1204 allow ONRR or a State that receives a statutorily prescribed portion of the royalties from a Federal lease to grant certain relief for marginal properties. This relief includes allowing a lessee to make a lump-sum advance payment of royalties instead of monthly royalty payments and various accounting and auditing relief options. *See* 30 CFR 1204.3. Lessees must submit information to ONRR for this relief. *See* §§ 1204.202, 1204.203, 1204.205, 1204.206, and 1204.209 to 1204.211.

(d) Requests To Exceed Allowance Limits

Title 30 CFR part 1206—Product Valuation, subparts C and D, prior to their amendment effective January 1, 2017, permitted a Federal oil and gas lessee to request to exceed certain caps that ONRR's regulations place on transportation and processing allowances by filing form ONRR–4393 (Request to Exceed Regulatory Allowance Limitation), with supporting documentation. *See* §§ 1206.109(c)(2) (2016), 1206.153(c)(3) (2016), and 1206.158(c)(3) (2016). Subject to the statute of limitations, a lessee may file this form to request to exceed the caps for oil and gas produced prior to January 1, 2017.

This ICR does not include burden hours for submitting information on form ONRR–4393 for Indian leases because those burden hours are addressed in ONRR's ICR 1012–0002 (Indian Oil and Gas Valuation).

(e) Information Collections: This ICR covers the paperwork requirements under 30 CFR parts 1202, 1204, and 1206.

Title of Collection: Federal Oil and Gas Valuation—30 CFR parts 1202, 1204 and 1206.

OMB Control Number: 1012–0005.

Form Number: ONRR–4393.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses.

Total Estimated Number of Annual Respondents: 120 Federal lessees/designees and 7 States for Federal oil and gas.

Total Estimated Number of Annual Responses: 139.

Estimated Completion Time per Response: The average completion time is 71.32 hours per response. The average completion time is calculated by dividing the total estimated burden hours (9,913) by the estimated annual responses (139).

Estimated Number of Annual Burden Hours: 9,913 hours.

For this renewal cycle, the burden hours have decreased 105 hours in part 1206 due to the Consolidated Federal and Indian Oil & Gas and Federal & Indian Coal Valuation Reform Final Reform Rule published on July 1, 2016 (81 FR 43337), and effective January 1, 2017.

Respondent's Obligation: The information that a lessee must submit pursuant to 30 CFR parts 1202 and 1206 for calculating royalties and other payment obligations for Federal oil and gas leases is mandatory. The information that a lessee must submit to obtain prepayment, accounting, or auditing relief for qualifying Federal marginal properties or to exceed the transportation and processing regulatory caps for oil and gas produced prior to 2017 is required to obtain or retain a benefit.

Frequency of Collection: Annually and on occasion.

Estimated Annual Nonhour Burden Cost: ONRR has identified no ''nonhour'' cost burden associated with the collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Howard Cantor,

Acting Director, Office of Natural Resources Revenue.

[FR Doc. 2023–00113 Filed 1–6–23; 8:45 am]

BILLING CODE 4335–30–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1581 (Final)]

Steel Nails From Sri Lanka; Termination of Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: On December 23, 2022, the Department of Commerce published

notice in the **Federal Register** of a negative final determination of less than fair value (LTFV) in connection with the subject investigation concerning Sri Lanka (87 FR 78933). Accordingly, antidumping duty Investigation No. 731–TA–1581 (Final) concerning steel nails from Sri Lanka is terminated.

DATES: December 23, 2022.

FOR FURTHER INFORMATION CONTACT: Lawrence Jones (202–205–3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930 and pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)). This notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: January 3, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–00107 Filed 1–6–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1575 and 731–TA–1577 (Final)]

Emulsion Styrene-Butadiene Rubber From Czechia and Russia

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded by reason of imports of emulsion styrene-butadiene rubber (''ESBR'') from Czechia and Russia, provided for in statistical reporting numbers 4002.19.0015 and 4002.19.0019 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV'').[2] [3]

Background

The Commission instituted these investigations effective November 15, 2021, following receipt of petitions filed with the Commission and Commerce by Lion Elastomers LLC (Port Neches, Texas). The Commission scheduled the final phase of the investigations following notification of preliminary determinations by Commerce that imports of ESBR from Czechia and Russia were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 15, 2022 (87 FR 42498). The Commission conducted its hearing on November 8, 2022. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to § 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on December 27, 2022. The views of the Commission are contained in USITC Publication 5392 (January 2023), entitled *Emulsion Styrene-Butadiene Rubber from Czechia and Russia: Investigation Nos. 731–TA–1575 and 731–TA–1577 (Final).*

By order of the Commission.

Issued: January 4, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–00145 Filed 1–6–23; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 87 FR 68998 and 69002, November 17, 2022.

[3] Commissioner Randolph J. Stayin not participating.

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Information Advisory Council; Meetings

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of meetings held January 24–26, 2023.

SUMMARY: Notice is hereby given that the Workforce Information Advisory Council (WIAC or Advisory Council) will meet in-person January 24–26, 2023. Information for public attendance at the virtual meetings will be posted at *www.dol.gov/agencies/eta/wioa/wiac/meetings* several days prior to each meeting date. The meetings will be open to the public.

DATES: The meetings will take place January 24–26, 2023. The agenda and meeting times, which are subject to change, are listed below in the *Agenda* section. Public statements and requests for special accommodations or to address the Advisory Council must be received by January 17, 2023.

ADDRESSES: The meeting will be held at the US Department of Labor Frances Perkins Building, 200 Constitution Ave. NW, Washington, DC, 20210 in meeting Rooms N–4437. Please enter the building using the visitors entrance at 3rd & C Str. NW. Please email public statements and requests to address the WIAC email address, *WIAC@dol.gov,* with a subject line of ''WIAC January 2023 meeting''.

FOR FURTHER INFORMATION CONTACT: Steven Rietzke, Chief, Division of National Programs, Tools, and Technical Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–4510, 200 Constitution Ave. NW, Washington, DC 20210; Telephone: 202–693–3912; Email: *WIAC@dol.gov.* Mr. Rietzke is the WIAC Designated Federal Officer.

SUPPLEMENTARY INFORMATION:

Background: These meetings are being held pursuant to Sec. 308 of the Workforce Innovation and Opportunity Act of 2014 (WIOA) (Pub. L. 113–128), which amends Sec. 15 of the Wagner-Peyser Act of 1933 (29 U.S.C. 491–2). The WIAC is an important component of WIOA. The WIAC is a federal advisory committee of workforce and labor market information experts representing a broad range of national, State, and local data and information users and producers. The WIAC was established in accordance with provisions of the Federal Advisory Committee Act (FACA), as amended (5

U.S.C. App.) and will act in accordance with the applicable provisions of FACA and its implementing regulation at 41 CFR 102–3. The purpose of the WIAC is to provide recommendations to the Secretary of Labor (Secretary), working jointly through the Assistant Secretary for Employment and Training and the Commissioner of Labor Statistics, to address: (1) the evaluation and improvement of the nationwide workforce and labor market information (WLMI) system and statewide systems that comprise the nationwide system; and (2) how the Department and the States will cooperate in the management of those systems. These systems include programs to produce employment-related statistics and State and local workforce and labor market information.

The Department of Labor anticipates the WIAC will accomplish its objectives by: (1) studying workforce and labor market information issues; (2) seeking and sharing information on innovative approaches, new technologies, and data to inform employment, skills training, and workforce and economic development decision making and policy; and (3) advising the Secretary on how the workforce and labor market information system can best support workforce development, planning, and program development. Additional information is available at *www.dol.gov/agencies/eta/wioa/wiac/meetings.*

Purpose: The WIAC is currently in the process of identifying and reviewing issues and aspects of the WLMI system and statewide systems that comprise the nationwide system and how the Department and the States will cooperate in the management of those systems. As part of this process, the Advisory Council meets to gather information and to engage in deliberative and planning activities to facilitate the development and provision of its recommendations to the Secretary in a timely manner.

Agenda: The agenda and meeting times are:

Tuesday, January 24, 2023, 1:00 p.m.–5:00 p.m.

1:00 p.m.–1:15 p.m. Welcome, Review of Agenda, and Goals for Meeting Series
1:15 p.m.–1:45 p.m. Introductions and Opening Remarks from Leadership
1:45 p.m.–2:30 p.m. Review of WIAC Charter and Past Recommendations
2:30 p.m.–2:50 p.m. 20-Minute Break
2:50 p.m.–4:50 p.m. Initial Walk-Through and Discussion of Combined Draft Recommendations
4:50 p.m.–5:00 p.m. Closing and Next Steps

Wednesday, January 25, 2023, 9:00 a.m.–5:00 p.m.

9:00 a.m.–9:15 a.m. Welcome and Review of Agenda
9:15 a.m.–10:30 a.m. Skills Presentations
10:30 a.m.–10:45 a.m. 15-Minute Break
10:45 a.m.–12:00 p.m. Skills Presentations Continued
12:00 p.m.–1:30 p.m. Lunch Break
1:30 p.m.–3:00 p.m. Discussion of Skills Presentations and Council Member Panel
3:00 p.m.–3:15 p.m. 15-Minute Break
3:15 p.m.–3:45 p.m. Public Comment (*at the discretion of the DFO*)
3:45 p.m.–4:50 p.m. Prioritize and Discuss Specific Edits to Draft Recommendations
4:50 p.m.–5:00 p.m. Closing and Next Steps

Thursday, January 26, 2023, 9:00 a.m.–1:00 p.m.

9:00 a.m.–9:15 a.m. Welcome and Review of Agenda
9:15 a.m.–10:45 a.m. Finalize and Vote to Approve Recommendations
10:45 a.m.–11:00 a.m. 15-Minute Break
11:00 a.m.–12:50 p.m. Discuss Areas for Future Focus
12:50 p.m.–1:00 p.m. Closing and Next Steps

A detailed agenda will be available at *www.dol.gov/agencies/eta/wioa/wiac/meetings* shortly before the meetings commence.

The Advisory Council will open the floor for public comment at approximately 3:15 p.m. EDT on January 25, 2023, for up to approximately 30 minutes total. However, that time may change at the WIAC chair's discretion.

Attending the meetings: You must have a valid government issued picture ID to be admitted to the Department of Labor Francis Perkins Building. Members of the public who require reasonable accommodations to attend any of the meetings may submit requests for accommodations via email to the email address indicated in the **FOR FURTHER INFORMATION CONTACT** section with the subject line ''January 2023 WIAC Meeting Accommodations'' by the date indicated in the **DATES** section. Please include a specific description of the accommodations requested and phone number or email address where you may be contacted if additional information is needed to meet your request. If problems arise accessing the meetings, please contact Donald Haughton, Unit Chief in the Division of National Programs, Tools, and Technical Assistance, Employment and Training Administration, U.S. Department of Labor, at 202–693–2784.

Public statements: Organizations or members of the public wishing to submit written statements may do so by mailing them to the person and address indicated in the **FOR FURTHER INFORMATION CONTACT** section by the date indicated in the **DATES** section or transmitting them as email attachments in PDF format to the email address indicated in the **FOR FURTHER INFORMATION CONTACT** section with the subject line ''January 2023 WIAC Meeting Public Statements'' by the date indicated in the **DATES** section. Submitters may include their name and contact information in a cover letter for mailed statements or in the body of the email for statements transmitted electronically. Relevant statements received before the date indicated in the **DATES** section will be included in the record of each meeting. No deletions, modifications, or redactions will be made to statements received, as they are public records. Please do not include personally identifiable information in your public statement.

Requests to Address the Advisory Council: Members of the public or representatives of organizations wishing to address the Advisory Council should forward their requests to the contact indicated in the **FOR FURTHER INFORMATION CONTACT** section, or contact the same by phone, by the date indicated in the **DATES** section. Oral presentations will be limited to 10 minutes, time permitting, and shall proceed at the discretion of the Advisory Council chair. Individuals with disabilities, or others who need special accommodations, should indicate their needs along with their request.

Brent Parton,

Acting Assistant Secretary for Employment and Training Administration.

[FR Doc. 2023–00105 Filed 1–6–23; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice To Ensure State Workforce Agencies Are Aware of the Revised Schedule of Remuneration for the Unemployment Compensation for Ex-Servicemembers (UCX) Program That Reflects the Military Pay Increase Effective January 1, 2023

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

Each year, the Department of Defense issues a Schedule of Remuneration used by states for UCX purposes. States must use the schedule to determine Federal military wages for UCX ''first claims'' only when the Federal Claims Control Center (FCCC) responds to a request for information indicating that there is no Copy 5 of the Certificate of Release or Discharge from Active Duty (DD Form 214) for an individual under the social security number provided. A response from the FCCC that indicates ''no DD214 on file'' will prompt the state to start the affidavit process and to use the attached schedule to calculate the Federal military wages for an unemployment insurance or UCX monetary determination.

The schedule applies to UCX ''first claims'' filed beginning with the first day of the first week that begins on or after January 1, 2023, pursuant to the UCX program regulations (see 20 CFR 614.12(c)). States must continue to use the 2022 schedule (or other appropriate schedule) for UCX ''first claims'' filed before the effective date of the revised schedule.

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

Attachment I

2023 Federal Schedule of Remuneration

[20 CFR 614.12(d)]

Pay grade	Monthly rate	Weekly (7/30th)	Daily (1/30th)
1. *Commissioned Officers:*			
O–10	22,674.18	5,290.64	755.81
O–9	22,674.18	5,290.64	755.81
O–8	22,154.18	5,169.31	738.47
O–7	19,867.61	4,635.78	662.25
O–6	17,477.84	4,078.16	582.59
O–5	14,760.02	3,444.00	492.00
O–4	12,659.81	2,953.96	421.99
O–3	10,029.58	2,340.23	334.32
O–2	8,156.84	1,903.26	271.89
O–1	6,282.09	1,465.82	209.40
2. *Commissioned Officers With Over 4 Years Active Duty As An Enlisted Member or Warrant Officer:*			
O–3 E	11,722.18	2,735.17	390.74
O–2 E	9,679.30	2,258.50	322.64
O–1 E	8,473.78	1,977.22	282.46
3. *Warrant Officer:*			
W–5	13,481.45	3,145.67	449.38
W–4	12,200.29	2,846.73	406.68
W–3	10,546.66	2,460.89	351.56
W–2	8,989.00	2,097.43	299.63
W–1	7,682.57	1,792.60	256.09
4. *Enlisted Personnel:*			
E–9	11,442.10	2,669.82	381.40
E–8	9,488.53	2,213.99	316.28
E–7	8,477.60	1,978.11	282.59
E–6	7,453.77	1,739.21	248.46
E–5	6,357.51	1,483.42	211.92
E–4	5,265.64	1,228.65	175.52
E–3	4,810.97	1,122.56	160.37
E–2	4,521.73	1,055.07	150.72
E–1	4,129.79	963.62	137.66

The Federal Schedule includes columns reflecting derived weekly and daily rates. This revised Federal Schedule of Remuneration is effective for UCX ''first claims'' filed beginning with the first day of the first week which begins on or after January 1, 2023, pursuant to 20 CFR 614.12*(c).*

[FR Doc. 2023–00104 Filed 1–6–23; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Data Users Advisory Committee; Request for Nominations

AGENCY: Bureau of Labor Statistics (BLS)

ACTION: Request for nominations.

SUMMARY: The BLS is soliciting new members for its Data Users Advisory Committee (DUAC). The current membership expires on May 1, 2023.

DATES: Nominations for the DUAC membership should be emailed by February 8, 2023.

ADDRESSES: Nominations for the DUAC membership should be sent via email to *DUACMembernominations@bls.gov.* Nominations are only being accepted through email as BLS is in maximum telework status pending its relocation to Suitland. Please submit in Word or PDF format.

FOR FURTHER INFORMATION CONTACT: Ebony Davis, Program Analyst, U.S. Bureau of Labor Statistics. Telephone: 202–691–6636. This is not a toll-free number. Email: *Davis.Ebony@bls.gov.*

SUPPLEMENTARY INFORMATION: The DUAC provides advice to the Bureau of Labor Statistics from the points of view of data users from various sectors of the U.S. economy, including the labor, business, research, academic, and government communities, on matters related to the analysis, dissemination, and use of the Bureau's statistics, on its published reports, and on gaps between or the need for new Bureau statistics.

The Committee consists of 20 members and will be chosen from a cross-section of individuals who represent a balance of expertise across a broad range of BLS program areas, including employment and

unemployment statistics, occupational safety and health statistics, compensation measures, price indexes, and productivity measures; or other areas related to the subject matter of BLS programs. BLS invites persons interested in serving on the DUAC to submit their names for consideration for committee membership.

BLS intends to renew membership in the DUAC for another three years. The BLS operates over two dozen surveys that measure employment and unemployment, compensation, worker safety, productivity, and consumer and producer price movements. BLS provides a wealth of economic data and analyses to support public and private decision making. The DUAC was established to provide advice to the Commissioner of Labor Statistics on the priorities of data users, suggestions concerning the addition of new programs, changes in emphasis of existing programs or cessation of obsolete programs, and advice on potential innovations in data analysis, dissemination, and presentation.

Nominations: BLS is looking for committed DUAC members who have a strong interest in, and familiarity with, BLS data. The Agency is looking for nominees who use and have a comprehensive understanding of economic statistics. The U.S. Bureau of Labor Statistics is committed to bringing greater diversity of thought, perspective, and experience to its advisory committees. Nominees from all races, gender, age, and disabilities are encouraged to apply. Interested persons may nominate themselves or may submit the name of another person who they believe to be interested in and qualified to serve on the DUAC. Nominations may also be submitted by organizations. Nominations should include the name, address, and telephone number of the candidate. Each nomination should include a summary of the candidate's training or experience relating to BLS data specifically, or economic statistics more generally. BLS will conduct a basic background check of candidates before their appointment to the DUAC. The background check will involve accessing publicly available, internet-based sources.

Authority: This notice was prepared in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2.

Signed at Washington, DC, this 3rd day of January 2023.

Leslie Bennett,

Chief, Division of Management Systems.

[FR Doc. 2023–00101 Filed 1–6–23; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; NSF's Computer and Information Science and Engineering (CISE) Broadening Participation in Computing (BPC) Pilot Survey

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

Comments: Comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the NSF, including whether the information shall have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

Copies of the submission may be obtained by calling 703–292–7556. NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: NSF's Computer and Information Science and Engineering (CISE) Broadening Participation in Computing (BPC) Pilot Survey.

OMB Control No.: 3145-New.

Abstract: Guided by its Strategic Plan, the National Science Foundation (NSF) has had a longstanding commitment to broadening participation of underrepresented groups and diverse institutions in science, technology, engineering, and math (STEM). In recent years, the Computer and Information Science and Engineering (CISE) Directorate has made a concerted effort to address underrepresentation of various groups in the field of computer science, including women, persons with disabilities, Blacks and African Americans, Hispanics and Latinos, American Indians, Alaska Natives, Native Hawaiians, and Other Pacific Islanders. Underrepresentation in the computer science field has resulted in unwelcoming work and academic environments, the belief among those in positions of influence (*e.g.,* counselors, teachers, faculty, and recruiters) that some people are not well suited to computing or are less likely to excel, and a lack of policies promoting equity within educational institutions and private companies.

This underrepresentation has important implications for society. Computing is one of the fastest growing sectors of the economy, and the lack of diversity deprives the field of a wealth of experience, knowledge, expertise, and perspective. The CISE Strategic Plan for Broadening Participation (November 2012) recognizes that the ''*. . . causes of longstanding underrepresentation are complex and*

deeply rooted in the cultures of different demographic groups as well as in our society, in our educational institutions, and in our popular media. They will not be easily or quickly changed.''

The NSF CISE Directorate requests the Office of Management and Budget (OMB) approval of this clearance to initiate new data collections to be conducted as part of an external evaluation of the CISE BPC pilot. These collections, to be conducted by the evaluation contractor, include:

Survey of BPC pilot projects. A one-time web-based survey of all BPC pilot projects funded between FY19 to FY21. The purpose is to corroborate and confirm key findings from reviews of existing project documentation (*e.g.,* types of strategies that BPC pilots are using to address systemic barriers, as described in Research Performance Progress Reports), as well as to collect data about topics not covered by existing documentation. The survey data will enable NSF to assess the feasibility and value of specific data elements that might be included in recommendations for how to document the characteristics and outcomes of BPC pilots in future years.

Interviews with BPC pilot projects. Interviews with representatives from a purposeful sample of 30 BPC pilot projects funded between FY19 to FY21. The interviews, to be conducted using a virtual meeting platform at a time convenient for the participants, will provide in-depth information about specific topics of interest to NSF (*e.g.,* how BPC pilot project plans and Departmental plans are being implemented, effective strategies for broadening participation across a range of preK–20 settings). An added purpose is to corroborate findings obtained through prior reviews of existing documents and dive more deeply on selected areas that are of interest to CISE staff and other stakeholders.

This data collection is necessary to provide NSF with timely and actionable information about the characteristics, broad strategies and activities, short-term outputs, and outcomes associated with the approximately 800 awards funded through the CISE broadening participation in computing (BPC) pilot. The information collected will provide a better understanding of: (1) the outputs and outcomes of the BPC pilot projects and whether they are correlated with national trends related to computing, (2) the feasibility of measuring the types of impacts associated with BPC pilots; and (3) promising strategies.

Use of the Information: Aggregate results from the survey and interviews will be summarized in reports developed by the evaluation contractor that will be provided to NSF. While the individual survey and interview responses will be identifiable to the contractor, the reports provided to NSF will only include overall results. Westat will not report any No individual survey or individual responses will be reported to NSF, and no information about individuals participating in the surveys and interviews will be released to anyone outside the contractor's organization. The data collected and reported on will be used for planning, management, and evaluation purposes. These data are needed for effective administration, program monitoring, evaluation, and for strategic reviews and measuring attainment of NSF's program and strategic goals, as identified by the President's Accountable Government Initiative, the Government Performance and Results Act Modernization Act of 2010, Evidence-Based Policymaking Act of 2018, and NSF's Strategic Plan.

Expected Respondents: The respondents are either Principal Investigators (PIs) and/or other key personnel on grants funded through the NSF CISE pilot. The survey will include all PIs with awards that required a BPC plan funded from FY 19 to FY 21 (approximately 800 total). The interviews will include PIs and/or other key personnel from a sample of 30 projects.

Estimate of Burden:

Estimates of Annualized Cost to Respondents for the Hour Burdens

The overall annualized cost to the respondents is estimated to be $21,070. The following table shows the estimated burden and costs to respondents, who are generally computer science teachers at the postsecondary level. This estimated hourly rate is based on a report from the Bureau of Labor Statistics' Occupational Employment and Wages, May 2021).[1] According to this report, the average hourly rate is $43.08.

Collection title	Total number of respondents	Burden hours per respondent	Total hour burden	Average hourly rate	Estimated annual cost
Survey of BPC pilot projects	800	.5	400	$43	$17,200
Interviews with BPC pilot projects	90	1	90	43	3,870
Total	890		490		21,070

Estimated Number of Responses per Report: Data collection for the collections involves all awardees in the programs involved for the survey and a sample of 90 representatives from 30 projects for the interviews.

Dated: January 3, 2023.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2023–00131 Filed 1–6–23; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by February 8, 2023. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue,

[1] *https://www.bls.gov/oes/current/oes251021.htm.*

Alexandria, Virginia 22314 or *ACApermits@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, at the above address, 703–292–4479.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2023–036

1. *Applicant:* Jason Calabretta, NBC News, 30 Rockefeller Plaza, New York, NY 10112

Activity for Which Permit is Requested: Waste Management. The applicant seeks an ACA permit for the purposes of waste management associated with the use of Remotely Piloted Aircrafts (RPAS) in Antarctica. Aircrafts will be launched from land or by boat and footage will be used for the purposes of producing a television news segment. RPAS operations will occur in association with regular operations of Seabourn RPAs will not be flown over any concentrations of wildlife, Antarctic Specially Protected or Managed Areas or Historic Sites and Monuments without appropriate authorization. Aircraft are only to be flown by experienced, pre-approved pilots in fair weather conditions and in the presence of an observer, who will always maintain visual line of sight with the aircraft during operation. Measures are in place to prevent loss of the aircraft.

Location: Antarctic Peninsula Area.

Dates of Permitted Activities: January 26, 2023–February 7, 2023.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2023–00137 Filed 1–6–23; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Open to the Public Meetings of the Networking and Information Technology Research and Development (NITRD) Program

AGENCY: Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO), National Science Foundation.

ACTION: Notice of public meetings.

SUMMARY: The NITRD Joint Engineering Team (JET) and Middleware And Grid Interagency Coordination (MAGIC) Team hold meetings that are open to the public to attend. The JET and the MAGIC Team provide an opportunity for the public to engage and participate in information sharing with Federal agencies. The JET and MAGIC Team report to the NITRD Large Scale Networking Interagency Working Group.

DATES: January 2023–December 2023.

FOR FURTHER INFORMATION CONTACT: Paul Love for the JET and Mallory Hinks for the MAGIC Team at *nco@nitrd.gov* or (202) 459–9674. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday, except for U.S. Federal Government holidays.

SUPPLEMENTARY INFORMATION: The Joint Engineering Team (JET), established in 1997, provides an opportunity for information sharing among Federal agencies and non-Federal participants who have an interest in high-performance research and engineering or research and education networking and networking to support science applications.

The MAGIC Team, established in 2002, provides for information sharing among Federal agencies and non-Federal participants with interests and responsibility for middleware, Grid, and cloud projects; middleware, Grid, and cloud research and infrastructure; implementing or operating Grids and clouds; and users of Grids, clouds, and middleware.

The JET and MAGIC Team meetings are hosted by the NITRD NCO with Zoom participation available for each meeting.

Public Meetings Website: The JET and MAGIC Team meetings are scheduled 30 days in advance of the meeting date. Please reference the NITRD Public Meetings web page (*https://www.nitrd.gov/public-meetings/*) for each Team's upcoming meeting dates and times, in addition to the agendas, minutes, and other meeting materials and information.

Public Meetings Mailing Lists: Members of the public may be added to the mailing lists by sending their full name and email address to *jet-signup@nitrd.gov* for JET and *magic-signup@nitrd.gov* for MAGIC, with the subject line: ''Add to JET'' and/or ''Add to MAGIC.'' Meeting notifications and information are shared via the mailing lists.

Public Comments: The government seeks individual input; attendees/participants may provide individual advice only. Members of the public are welcome to submit their comments for JET to *jet-comments@nitrd.gov* and for MAGIC to *magic-comments@nitrd.gov*. Please note that under the provisions of the Federal Advisory Committee Act (FACA), all public comments and/or presentations will be treated as public documents and may be made available to the public via the JET (*https://www.nitrd.gov/coordination-areas/lsn/jet/*) and MAGIC (*https://www.nitrd.gov/coordination-areas/lsn/magic/*) web pages.

Reference Website: NITRD Website at: *https://www.nitrd.gov/*.

Submitted by the National Science Foundation in support of the Networking and Information Technology Research and Development National Coordination Office on January 4, 2023.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2023–00162 Filed 1–6–23; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Antarctic Conservation Act Application Permit Form

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding this information collection are best assured of having their full effect if received by February 8, 2023. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting

''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street NW, Room 10235, Washington, DC 20503, and Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; telephone (703) 292–7556 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

Copies of the submission may be obtained by calling 703–292–7556.

SUPPLEMENTARY INFORMATION: NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

Title of Collection: Antarctic Conservation Act Application Permit Form.

OMB Number: 3145–0034.

Type of Request: Intent to seek approval to renew an information collection.

Overview of this Information Collection: The current Antarctic Conservation Act Application Permit Form (NSF 1078) has been in use for several years. The form requests general information, such as name, affiliation, location, etc., and more specific information as to the type of object to be taken (plant, native mammal, or native bird).

Use of the Information: The purpose of the regulations (45 CFR 670) is to conserve and protect the native mammals, birds, plants, and invertebrates of Antarctica and the ecosystem upon which they depend and to implement the Antarctic Conservation Act of 1978, Public Law 95–541, as amended by the Antarctic Science, Tourism, and Conservation Act of 1996, Public Law 104–227.

Burden on the Public: The Foundation estimates about 25 responses annually at 45 minutes per response; this computes to approximately 19 hours annually.

Dated: January 3, 2023.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2023–00132 Filed 1–6–23; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0089]

Information Collection: NRC Form 314 Certificate of Disposition of Materials

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''NRC Form 314 Certificate of Disposition of Materials.''

DATES: Submit comments by February 8, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0089 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0089.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML22318A128. The supporting statement is available in ADAMS under Accession No. ML22318A127.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by

selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''NRC Form 314 Certificate of Disposition of Materials.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on August 15, 2022, 87 FR 50128.

1. *The title of the information collection:* ''NRC Form 314 Certificate of Disposition of Materials.''
2. *OMB approval number:* 3150–0028.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* Form 314.
5. *How often the collection is required or requested:* Form is required when NRC licensees wish to terminate their license.
6. *Who will be required or asked to respond:* Respondents are firms, institutions, and individuals holding NRC license to possess and use radioactive materials who do not wish to renew those licenses.
7. *The estimated number of annual responses:* 110.
8. *The estimated number of annual respondents:* 110.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 55 hours (110 × 0.5 hour).
10. *Abstract:* NRC Form 314 is submitted by a materials licensee who wishes to terminate its license. The form provides information needed by NRC to determine whether the licensee has radioactive materials on hand which must be transferred or otherwise disposed of prior to expiration or termination of the license.

Dated: January 3, 2023.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–00122 Filed 1–6–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0084]

Information Collection: NRC Form 277, Request for Visit

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''NRC Form 277, Request for Visit.''

DATES: Submit comments by February 8, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301 415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0084 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0084.

NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML22235A688. The supporting statement is available in ADAMS under Accession No. ML22341A083.

- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not

want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''NRC Form 277, Request for Visit.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on October 4, 2022, 87 FR 60220.

1. *The title of the information collection:* ''NRC Form 277, Request for Visit''.
2. *OMB approval number:* 3150–0051.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 277.
5. *How often the collection is required or requested:* As needed.
6. *Who will be required or asked to respond:* Licensees and NRC contractors.
7. *The estimated number of annual responses:* 60.
8. *The estimated number of annual respondents:* 60.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 10.
10. *Abstract:* NRC Form 277 is completed by NRC contractors and licensees who have been granted an NRC access authorization and require verification of that access authorization and need-to-know due to (1) a visit to NRC, (2) a visit to other contractors/licensees or government agencies in which access to classified information will be involved, or (3) unescorted area access is desired.

Dated: January 3, 2023.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–00120 Filed 1–6–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of January 9, 16, 23, 30, February 6, 13, 2023. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of January 9, 2023

There are no meetings scheduled for the week of January 9, 2023.

Week of January 16, 2023—Tentative

There are no meetings scheduled for the week of January 16, 2023.

Week of January 23, 2023

Tuesday, January 24, 2023

9:00 a.m. Overview of Accident Tolerant Fuel Activities (Public Meeting) (Contact: Samantha Lav: 301–415–3487)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Thursday, January 26, 2023

9:00 a.m. Strategic Programmatic Overview of the Decommissioning and Low-Level Waste and Nuclear Materials Users Business Lines (Public Meeting (Contacts: Annie Ramirez: 301–415–6780; Candace Spore: 301–415–8537)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of January 30, 2023—Tentative

There are no meetings scheduled for the week of January 30, 2023.

Week of February 6, 2023

Thursday, February 9, 2023

9:00 a.m. Advanced Reactor Licensing Under 10 CFR parts 50 and 52 (Public Meeting) (Contact: Omid Tabatabai: 301–415–6616)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of February 13, 2023

There are no meetings scheduled for the week of February 13, 2023.

Contact Person For More Information: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: January 4, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2023–00204 Filed 1–5–23; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0086]

Information Collection: NRC Form 237, Request for Access Authorization

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''NRC Form 237, Request for Access Authorization.''

DATES: Submit comments by February 8, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301 415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0086 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0086.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML22235A683. The supporting statement is available in ADAMS under Accession No. ML22342B203.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''NRC Form 237, Request for Access Authorization.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on October 4, 2022, 87 FR 60211.

1. *The title of the information collection:* ''NRC Form 237, Request for Access Authorization''.

2. *OMB approval number:* 3150–0050.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* NRC Form 237.

5. *How often the collection is required or requested:* On occasion.

6. *Who will be required or asked to respond:* NRC contractors, subcontractors, licensee employees, employees of other government agencies, and other individuals who are not NRC employees.

7. *The estimated number of annual responses:* 783.

8. *The estimated number of annual respondents:* 783.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 157.

10. *Abstract:* NRC Form 237 is completed by NRC contractors, subcontractors, licensee employees, employees of other government agencies, and other individuals who are not NRC employees who require an NRC access authorization.

Dated: January 3, 2023.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–00115 Filed 1–6–23; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[Notice BSC–HCM–2022–0005; Docket No. BSC–HCM–2022–0005; Sequence 1]

Business Standards Council Review of Human Capital Federal Integrated Business Framework Business Standards: Request for Public Comment

AGENCY: Office of Personnel Management (OPM).

ACTION: Request for public comment.

SUMMARY: This notice informs the public of the opportunity to provide input on the proposed service activities, business capabilities, service measures, and standard data elements for Human Capital Talent Acquisition, Talent Development, Employee Performance Management, Compensation and Benefits, and Separation and Retirement (Human Capital Business Reference Model (HCBRM) Functions A2–A6). This input will be used in formulation of business standards for Federal human capital management.

DATES: Comments due: Interested parties should submit comments via the method outlined in the **ADDRESSES** section on or before February 8, 2023.

ADDRESSES: Submit comments in response to Notice BSC–HCM–2022–0005 by *Regulations.gov*: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''Notice BSC–HCM–2022–0005''. Select the link ''Comment Now'' that corresponds with ''Notice BSC–HCM–2022–0005''. Follow the instructions provided at the screen. Please include your name, company name (if any), and ''Notice BSC–HCM–2022–0005'' on your attached document.

• *Instructions:* Please submit comments only and cite ''Notice BSC–HCM–2022–0005,'' in all correspondence related to this notice. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov,* approximately two-to-three business days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Pollack, Human Resources Line of Business (HRLOB) Program Manager, at 202–936–0068, or by email at *jeffrey.pollack@opm.gov.*

SUPPLEMENTARY INFORMATION: On April 26, 2019, the Office of Management and Budget published OMB memorandum 19–16, Centralized Mission Support Capabilities for the Federal Government (available at *https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-16.pdf*). Mission support business standards, established and agreed to by agencies, using the Federal Integrated Business Framework (FIBF) website at *https://ussm.gsa.gov/fibf/,* enable the Federal Government to better coordinate on the decision-making needed to determine what can be adopted and commonly shared. These business standards are an essential first step towards agreement on outcomes, data, and cross-functional end to end processes that will drive economies of scale and leverage the government's buying power. The business standards will be used as the foundation for common mission support services shared by Federal agencies.

OPM serves as the Human Capital Management (HCM) business standards lead on the Business Standards Council (BSC). The goal of the HCM business standards is to standardize Human Capital Management across the Federal government. The HCM business capabilities, service metrics, and standard data elements document the key activities, inputs, outputs, data elements, and other functional area intersections.

OPM is seeking public feedback on these draft business standards, including comments on understandability of the standards, suggested changes, and usefulness of the draft standards to industry and agencies.

Guiding questions in standard development include:

• Do the draft business standards appropriately document the business processes covered?

• Are the draft business standards easy to understand?

• Will your organization be able to show how your solutions and/or services can meet these draft business standards?

• What would you change about the draft business standards? Is there anything missing?

Comments will be used in formulation of the final business standards.

U.S. Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

[FR Doc. 2022–28317 Filed 1–6–23; 8:45 am]

BILLING CODE 6325–63–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–646, OMB Control No. 3235–0695]

Submission for OMB Review; Comment Request; Extension: Rule 17Ad–22

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17Ad–22 (17 CFR 240.17Ad–22) under the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*).

Rule 17Ad–22 was adopted to strengthen the substantive regulation of clearing agencies, promote the safe and reliable operation of covered clearing agencies, and improve efficiency, transparency, and access to covered clearing agencies.[1] Rule 17Ad–22, which consists of paragraphs (a)(1) through (e)(23), requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to address a number of topics, including governance, operations, and risk management. In particular, Rule 17Ad–22(e) includes requirements for covered clearing agencies, defined as registered clearing agencies that provide the services of a central counterparty or central securities depository; Rule 17Ad–22(d) includes requirements for all registered clearing agencies that are not covered clearing agencies; and Rules 17Ad–22(b) and (c) include certain other requirements for clearing agencies that perform central counterparty services. There are a number of collections of information contained in Rules 17Ad–22(b) through (e). The information collected in these provisions is necessary to assist the Commission in monitoring clearing agencies and carrying out the mandates of the Exchange Act, as amended by the Dodd-Frank Act, as well as the Clearing Supervision Act. The total estimated annual time burden of Rule 17Ad–22 is

[1] *See* 17 CFR 240.17Ad–22; *see also* Exchange Act Release No. 34–68080 (Oct. 22, 2012), 77 FR 66219, 66225–26 (Nov. 2, 2012).

8,532 hours, and the total estimated annual cost burden is $14,041,280.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by February 8, 2023 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: January 3, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–00133 Filed 1–6–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96597; File No. SR–MEMX–2022–34]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule

January 3, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 2022, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members[3] (the ''Fee Schedule'') pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on January 2, 2023. The text of the proposed rule change is provided in Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to modify the required criteria under Liquidity Provision Tier 2.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 16% of the total market share of executed volume of equities trading.[4] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 3% of the overall market share.[5] The Exchange in particular operates a ''Maker-Taker'' model whereby it provides rebates to Members that add liquidity to the Exchange and charges fees to Members that remove liquidity from the Exchange. The Fee Schedule sets forth the standard rebates and fees applied per share for orders that add and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

The Exchange currently provides a standard rebate of $0.0020 per share for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange (such orders, ''Added Displayed Volume''). The Exchange also currently offers Liquidity Provision Tiers 1–5, among other volume-based tiers, under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify the required criteria under Liquidity Provision Tier 2, as further described below.

Currently, the Exchange provides an enhanced rebate of $0.0032 per share for executions of Added Displayed Volume for Members that qualify for Liquidity Provision Tier 2 by achieving: (1) an ADAV[6] that is equal to or greater than 0.20% of the TCV;[7] or (2) an ADAV that is equal to or greater than 15,000,000 shares and a Step-Up ADAV[8] from October 2022 that is equal to or greater than 0.10% of the Member's October 2022 ADAV. Now, the Exchange proposes to modify the required criteria under Liquidity Provision Tier 2 such that Members would now qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.20% of the TCV; or (2) an ADAV that is equal to or greater than 15,000,000 shares and a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 1.5(p).

[4] Market share percentage calculated as of December 21, 2022. The Exchange receives and processes data made available through consolidated data feeds (*i.e.,* CTS and UTDF).

[5] *Id.*

[6] As set forth on the Fee Schedule, ''ADAV'' means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis.

[7] As set forth on the Fee Schedule, ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[8] As set forth on the Fee Schedule, ''Step-Up ADAV'' means ADAV in the relevant baseline month subtracted from current ADAV.

Step-Up ADAV[9] from October 2022 that is equal to or greater than 0.10% of the TCV. Thus, such proposed change would modify the Step-Up ADAV threshold in the second of the two existing alternative criteria to be based on a Member's Step-Up ADAV from October 2022 as a percentage of the TCV rather than as a percentage of the Member's October 2022 ADAV. The Exchange believes that basing the Step-Up ADAV threshold in this criteria on a Member's Step-Up ADAV from October 2022 as a percentage of the TCV (rather than as a percentage of the Member's October 2022 ADAV, as it is today) is reasonable and appropriate for this tier, as the TCV is another volume metric that is widely used by exchanges (including the Exchange) in criteria for volume-based tiers. As the proposed modified criteria is still based on a Step-Up ADAV threshold, it is intended to encourage Members to increase their order flow that adds liquidity to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members and market participants. The Exchange is not proposing to change the rebate for any executions under the Liquidity Provision Tier 2.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[10] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[12]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct additional order flow to the Exchange, which the Exchange believes would enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges (including the Exchange), and are reasonable, equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes that Liquidity Provision Tier 2, as modified by the changes proposed herein, is reasonable, equitable and not unfairly discriminatory for these same reasons, as such tier would provide Members with an incremental incentive to achieve certain volume thresholds on the Exchange, is available to all Members on an equal basis, and is reasonably designed to encourage Members to increase their liquidity-adding order flow to the Exchange, which the Exchange believes would enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants.

The Exchange also believes that such tier reflects a reasonable and equitable allocation of fees and rebates, as the Exchange believes that, after giving effect to the changes proposed herein, the enhanced rebate for executions of Added Displayed Volume under such tier remains commensurate with the new required criteria under such tier and is reasonably related to the market quality benefits that such tier is designed to achieve. As noted above, the Exchange believes that basing the Step-Up ADAV threshold in the relevant criteria on a Member's Step-Up ADAV from October 2022 as a percentage of the TCV (rather than as a percentage of the Member's October 2022 ADAV, as it is today) is reasonable and appropriate, as the TCV is another volume metric that is widely used by exchanges (including the Exchange) in criteria for volume-based tiers.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act[13] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to incentivize market participants to direct additional order flow that adds liquidity to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members and market participants. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''[14]

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow, including

[9] As set forth on the Fee Schedule, ''Step-Up ADAV'' means ADAV in the relevant baseline month subtracted from current ADAV.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See supra* note 12.

liquidity-adding orders, to the Exchange, thereby contributing to a deeper and more liquid market on the Exchange to the benefit of all Members, as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for the modified required criteria under Liquidity Provision Tier 2, and thus receive the corresponding enhanced rebate for executions of Added Displayed Volume, would continue to be available to all Members that meet the associated volume requirements in any month. As described above, the Exchange believes that the proposed new required criteria under such tier remains commensurate with the corresponding rebate under such tier and is reasonably related to the enhanced liquidity and market quality that such tier is designed to promote. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 16% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, including with respect to executions of Added Displayed Volume, and market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As described above, the proposed change represents a competitive proposal through which the Exchange is seeking to encourage additional order flow to the Exchange through volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants that achieve certain volume criteria and thresholds.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [15] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *SEC,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . ..''.[16] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[15] *See supra* note 12.

[16] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSE–2006–21)).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [17] and Rule 19b–4(f)(2) [18] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MEMX–2022–34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MEMX–2022–34. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 240.19b–4(f)(2).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MEMX–2022–34 and should be submitted on or before January 30, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–00117 Filed 1–6–23; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 96599; File No. SR–Phlx–2022–50]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 9, Section 13

January 3, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 23, 2022, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 9, Section 13, Position Limits.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 9, Section 13(a) related to Position Limits. Specifically, the Exchange proposes to remove rule text which provides, ''Standard and Poor's Depositary Receipts (''SPDRs''), which shall have no position limits.'' Today, the position limit for SPDR® S&P 500® ETF Trust (''SPY'') is 3,600,000 contracts on the same side of the market, as reflected within Options 9, Section 13(a).

In 2018, Phlx filed a rule change which amended the position limits for SPY.[3] Previously, SPY was subject to a pilot program that provided no position limits on options overlying SPY.[4] The pilot program, which was set to expire on July 12, 2018, was terminated and, in lieu of extending the SPY Pilot Program for another year, the Exchange established position and exercise limits for options on SPY of 1,800,000 contracts with such change becoming operative on July 12, 2018.[5] Subsequently, the SPY position and exercise limits were amended from 1,800,000 to 3,600,000.[6]

In 2018[7] and 2020,[8] the Exchange proposed to remove rule text from then Rule 1001 (now Options 9, Section 13)[9] regarding the aforementioned pilot program, but inadvertently did not remove the sentence setting no position limits when the Exchange added the new SPY position limits. At this time, the Exchange proposes to remove the sentence which was eliminated with the 2018 Rule Change so that there is no confusion that the SPY limits are 3,600,000 contracts on the same side of the market, as currently reflected in Options 9, Section 13(a).

Finally, the Exchange proposes a technical amendment to remove a stray open parenthesis within Options 9, Section 13(a).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that correcting the rule text within Options 9, Section 13(a) by removing the rule text stating that SPY has no position limits will protect investors and the public interest by removing confusing and incorrect rule text. Also, removing inadvertent and conflicting rule text regarding the SPY position limits, which applied to an expired pilot program, will make clear that the current SPY position limits are 3,600,000 contracts on the same side of the market.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] *See* Securities Exchange Act Release No. 83412 (June 12, 2018), 83 FR 28298 (June 18, 2018) (SR–Phlx–2018–44) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 1001, Entitled ''Position Limits'').

[4] *Id.*

[5] *Id.*

[6] *See* Securities Exchange Act Release No. 89153 (June 25, 2020), 85 FR 39619 (July 1, 2020) (SR–Phlx–2020–30) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 9, Section 13 To Increase the Position Limits for Options on Certain Exchange-Traded Funds).

[7] *See* note 4 above.

[8] *See* note 7 above.

[9] *See* Securities Exchange Act Release No. 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR–Phlx–2020–03) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Rules From Its Current Rulebook Into Its New Rulebook Shell).

[10] 15 U.S.C. 78f(b)

[11] 15 U.S.C. 78f(b)(5).

The Exchange believes that correcting the rule text within Options 9, Section 13(a) by removing the rule text stating that SPY has no position limits will protect investors and the public interest by removing confusing and incorrect rule text. Also, removing inadvertent and conflicting rule text regarding the SPY position limits, which applied to an expired pilot program, will make clear that the current SPY position limits are 3,600,000 contracts on the same side of the market.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) [13] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that its proposal to remove the incorrect rule text stating that SPY has no position limits will protect investors and the public interest by making clear that the current SPY position limits are 3,600,000 contracts on the same side of the market. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal will eliminate outdated and potentially confusing rule text, thereby enhancing the clarity of the Exchange's rule, and the proposal also does not raise any new or novel issues. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2022–50 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2022–50. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2022–50 and should be submitted on or before January 30, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Sherry R. Haywood.

Assistant Secretary.

[FR Doc. 2023–00119 Filed 1–6–23; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–493, OMB Control No. 3235–0550]

Proposed Collection; Comment Request; Extension: Rule 477

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 477 (17 CFR 230.477) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) sets forth procedures for withdrawing a registration statement, including any amendments or exhibits to the registration statement. The rule provides that if an issuer intends to rely on the safe harbor contained in Securities Act Rule 155 to conduct an unregistered private offering of

securities, the issuer must affirmatively state in the withdrawal application that it plans to undertake a subsequent private offering of its securities. Without this statement, the Commission would not be able to monitor a company's reliance on, and compliance with, Securities Act Rule 155(c). We estimate that approximately 327 issuers will file Securities Act Rule 477 submissions annually at an estimated one hour per response for a total annual burden of approximately 327 hours.

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by March 10, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 3, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–00134 Filed 1–6–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96598; File No. SR–GEMX–2022–14]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reduce GEMX's Options Regulatory Fee

January 3, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 22, 2022, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend GEMX's Pricing Schedule at Options 7, Section 5 to reduce the GEMX Options Regulatory Fee or ''ORF''.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on February 1, 2023.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/gemx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

GEMX proposes to lower its ORF from $0.0014 to $0.0013 per contract side on February 1, 2023. Previously, GEMX has filed to lower or waive its ORF in 2019, 2021 and 2022.[3] After a review of its regulatory revenues and regulatory costs, the Exchange proposes to reduce the ORF to ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.

Volumes in the options industry went over 900,000,000 total contracts as of August 2022 and remained over that threshold through November 2022. GEMX has taken measures in prior years to lower and waive its ORF to ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. Despite those prior measures, GEMX will need to reduce its ORF again to account for trading volumes in 2022. At this time, GEMX believes that the options volume it experienced in the second half of 2022 is likely to persist in 2023. The anticipated options volume would continue to impact GEMX's ORF collection which, in turn, has caused GEMX to propose reducing the ORF to ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, would not exceed the Exchange's total regulatory costs.

Collection of ORF

GEMX will continue to assess its ORF for each customer option transaction that is either: (1) executed by a Member on GEMX; or (2) cleared by an GEMX Member at The Options Clearing Corporation (''OCC'') in the customer range,[4] even if the transaction was executed by a non-Member of GEMX, regardless of the exchange on which the transaction occurs.[5] If the OCC clearing member is a GEMX Member, ORF is assessed and collected on all cleared customer contracts (after adjustment for CMTA [6]); and (2) if the OCC clearing member is not a GEMX Member, ORF is collected only on the cleared customer contracts executed at GEMX, taking into

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85140 (February 14, 2019), 84 FR 5511 (February 21, 2019) (SR–GEMX–2019–01) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Options Regulatory Fee); 92698 (August 18, 2021), 86 FR 47355 (August 24, 2021) (SR–GEMX–2021–08) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend GEMX's Options Regulatory Fee); and 94069 (January 26, 2022), 87 FR 5545 (February 1, 2022) (SR–GEMX–2022–03) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reduce GEMX's Options Regulatory Fee).

[4] Participants must record the appropriate account origin code on all orders at the time of entry of the order. The Exchange represents that it has surveillances in place to verify that members mark orders with the correct account origin code.

[5] The Exchange uses reports from OCC when assessing and collecting the ORF.

[6] CMTA or Clearing Member Trade Assignment is a form of ''give-up'' whereby the position will be assigned to a specific clearing firm at OCC.

account any CMTA instructions which may result in collecting the ORF from a non-Member.[7]

In the case where a Member both executes a transaction and clears the transaction, the ORF will be assessed to and collected from that Member. In the case where a Member executes a transaction and a different Member clears the transaction, the ORF will be assessed to and collected from the Member who clears the transaction and not the Member who executes the transaction. In the case where a non-Member executes a transaction at an away market and a Member clears the transaction, the ORF will be assessed to and collected from the Member who clears the transaction. In the case where a Member executes a transaction on GEMX and a non-Member clears the transaction, the ORF will be assessed to the Member that executed the transaction on GEMX and collected from the non-Member who cleared the transaction. In the case where a Member executes a transaction at an away market and a non-Member clears the transaction, the ORF will not be assessed to the Member who executed the transaction or collected from the non-Member who cleared the transaction because the Exchange does not have access to the data to make absolutely certain that ORF should apply. Further, the data does not allow the Exchange to identify the Member executing the trade at an away market.

ORF Revenue and Monitoring of ORF

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed regulatory costs. In determining whether an expense is considered a regulatory cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset ORF.

Revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the Exchange of the supervision and regulation of member customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Regulatory costs include direct regulatory expenses and certain indirect expenses in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations and examinations. The indirect expenses include support from such areas as Office of the General Counsel, technology, and internal audit. Indirect expenses were approximately 39% of the total regulatory costs for 2022. Thus, direct expenses were approximately 61% of total regulatory costs for 2022.[8]

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of its Members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

Proposal

Based on the Exchange's most recent review, the Exchange is proposing to reduce the amount of ORF that will be collected by the Exchange from $0.0014 per contract side to $0.0013 per contract side. The Exchange issued an Options Trader Alert on December 20, 2022 indicating the proposed rate change for February 1, 2023.[9]

The proposed reduction is based on current levels of options volume. The below table displays monthly volume from 2021.[10]

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Date	Total Contracts	Customer Sides	Trading Days	Quarter Contracts	Quarter Cust Sides	Quarter ADC	Quarter Cust ADS
Jan 2021	838,339,790	784,399,878	19				
Feb 2021	823,413,002	782,113,450	19				
Mar 2021	898,653,388	837,247,059	23	2,560,406,180	2,403,760,387	**41,973,872**	**39,405,908**
Apr 2021	711,388,828	667,208,963	21				
May 2021	718,368,993	659,913,862	20				
Jun 2021	866,099,522	809,242,842	22	2,295,857,343	2,136,365,667	**36,442,180**	**33,910,566**
Jul 2021	790,038,364	729,239,647	21				
Aug 2021	801,578,079	741,111,748	22				
Sep 2021	811,458,905	744,936,837	21	2,403,075,348	2,215,288,232	**37,548,052**	**34,613,879**
Oct 2021	821,102,002	760,524,395	21				
Nov 2021	944,355,975	866,102,667	21				
Dec 2021	561,154,417	503,350,470	13	2,326,612,394	2,129,977,532	**42,302,044**	**38,726,864**

[7] By way of example, if Broker A, a GEMX Member, routes a customer order to CBOE and the transaction executes on CBOE and clears in Broker A's OCC Clearing account, ORF will be collected by GEMX from Broker A's clearing account at OCC via direct debit. While this transaction was executed on a market other than GEMX, it was cleared by a GEMX Member in the member's OCC clearing account in the customer range, therefore there is a regulatory nexus between GEMX and the transaction. If Broker A was not a GEMX Member, then no ORF should be assessed and collected because there is no nexus; the transaction did not execute on GEMX nor was it cleared by a GEMX Member.

[8] The Exchange will finalize its 2023 Regulatory Budget in the first quarter of 2023.

[9] *See* Options Trader Alert 2022–44.

[10] The OCC data from December 2021 numbers reflect only 13 trading days as this information is through December 17, 2021. Volume data in the table represents numbers of contracts; each contract has two sides.

The Exchange compared the options volume in 2022 to the options volume in 2021. The below table displays monthly volume for 2022 to date.[11]

Date	Total Contracts	Customer Sides	Trading Days	Quarter Contracts	Quarter Cust Sides	Quarter ADC	Quarter Cust ADS
Jan 2022	891,440,498	797,406,012	20				
Feb 2022	802,161,195	709,778,708	19				
Mar 2022	939,163,167	840,433,394	23	2,632,764,860	2,347,618,114	**42,463,949**	**37,864,808**
Apr 2022	778,379,294	702,072,317	20				
May 2022	861,243,942	767,283,732	21				
Jun 2022	801,773,016	709,165,236	21	2,441,396,252	2,178,521,285	**39,377,359**	**35,137,440**
Jul 2022	738,813,504	655,311,174	20				
Aug 2022	908,077,814	813,006,778	23				
Sep 2022	910,263,106	794,395,507	21	2,557,154,424	2,262,713,459	**39,955,538**	**35,354,898**
Oct 2022	905,661,870	798,687,922	21				
Nov 2022	918,505,766	809,588,117	21	1,824,167,636	1,608,276,039	**43,432,563**	**38,292,287**

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Comparing 2021 to 2022, the options volumes in 2022 remained higher in a majority of the months in 2022.[12] November volume for 2022, while lower than November volume for 2021, remains higher than most months in 2021. With respect to customer options volume across the industry, total customer options contract average daily volume, to date, in 2022 is 36,509,256 as compared to total customer options contract average daily volume in 2021 which was 36,308,323.[13]

There can be no assurance that the Exchange's costs for 2023 will not differ materially from these expectations and prior practice, nor can the Exchange predict with certainty whether options volume will remain at the current level going forward. The Exchange notes however, that when combined with regulatory fees and fines, the revenue that may be generated utilizing an ORF rate of $0.0014 per contract side may result in revenue which exceeds the Exchange's estimated regulatory costs for 2023 if options volumes remain the same. The options volume for 2022 remains high when compared to 2021 volumes. GEMX lowered ORF in the beginning of 2022 to account for the options volume in 2021. The Exchange therefore proposes to reduce its ORF to $0.0013 per contract side to ensure that revenue does not exceed the Exchange's estimated regulatory costs in 2023. Particularly, the Exchange believes that reducing the ORF when combined with all of the Exchange's other regulatory fees and fines, would allow the Exchange to continue covering a material portion of its regulatory costs, while lessening the potential for generating excess revenue that may otherwise occur using the rate of $0.0014 per contract side.[14]

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. If the Exchange determines regulatory revenues may exceed or are projected to exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission and notifying[15] its Members via an Options Trader Alert.[16]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[17] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[18] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its members, and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[19] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed fee change is reasonable because customer transactions will be subject to a lower ORF fee than the rate that would otherwise be in effect on February 1, 2023. Moreover, the proposed reduction is necessary for the Exchange to avoid collecting revenue, in combination with other regulatory fees and fines, that would be in excess of its anticipated regulatory costs which is consistent with the Exchange's practices.

The Exchange designed the ORF to generate revenues that would be less than the amount of the Exchange's regulatory costs to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs, which is consistent with the view of the Commission that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. As discussed above, however, after review of its regulatory costs and regulatory revenues, which includes revenues from ORF and other regulatory fees and fines, the Exchange determined that absent a reduction in ORF, it may collect revenue which would exceed its regulatory costs. Indeed, the Exchange notes that when taking into account the potential that recent options volume persists, it estimates the ORF may

[11] The OCC data reflects data from January through November 2022. Volume data in the table represents numbers of contracts; each contract has two sides.

[12] February, June, July and November 2022 volumes are lower as compared to 2021 volumes in those same months.

[13] *See* data from OCC at: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Volume-by-Account-Type.*

[14] The Exchange notes that its regulatory responsibilities with respect to Member compliance with options sales practice rules have largely been allocated to FINRA under a 17d–2 agreement. The ORF is not designed to cover the cost of that options sales practice regulation.

[15] The Exchange will provide Members with such notice at least 30 calendar days prior to the effective date of the change.

[16] The Exchange notes that in connection with this proposal, it provided the Commission confidential details regarding the Exchange's projected regulatory revenue, including projected revenue from ORF, along with a projected regulatory expenses.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4).

[19] 15 U.S.C. 78f(b)(5).

generate revenues that would cover more than the approximated Exchange's projected regulatory costs. As such, the Exchange believes it's reasonable and appropriate to reduce the ORF amount from $0.0014 to $0.0013 per contract side.

The Exchange also believes the proposed fee change is equitable and not unfairly discriminatory in that it is charged to all Members on all their transactions that clear in the customer range at OCC.[20] The Exchange believes the ORF ensures fairness by assessing higher fees to those Members that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. For example, there are costs associated with main office and branch office examinations (*e.g.,* staff expenses), as well as investigations into customer complaints and the terminations of registered persons. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* Member proprietary transactions) of its regulatory program. Moreover, the Exchange notes that it has broad regulatory responsibilities with respect to activities of its Members, irrespective of where their transactions take place. Many of the Exchange's surveillance programs for customer trading activity may require the Exchange to look at activity across all markets, such as reviews related to position limit violations and manipulation. Indeed, the Exchange cannot effectively review for such conduct without looking at and evaluating activity regardless of where it transpires. In addition to its own surveillance programs, the Exchange also works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (''ISG'')[21] the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. Accordingly, there is a strong nexus between the ORF and the Exchange's regulatory activities with respect to customer trading activity of its Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. The Exchange notes, however, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[22] and paragraph (f) of Rule 19b–4[23] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–GEMX–2022–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–GEMX–2022–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–GEMX–2022–14, and should be submitted on or before January 30, 2023.

[20] If the OCC clearing member is a GEMX member, ORF is assessed and collected on all cleared customer contracts (after adjustment for CMTA); and (2) if the OCC clearing member is not a GEMX member, ORF is collected only on the cleared customer contracts executed at GEMX, taking into account any CMTA instructions which may result in collecting the ORF from a non-member.

[21] ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–00118 Filed 1–6–23; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:30 p.m. on Monday, January 9, 2023.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: January 5, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–00277 Filed 1–5–23; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, January 12, 2023.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: January 5, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–00279 Filed 1–5–23; 4:15 pm]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17749 and #17750; California Disaster Number CA–00365]

Administrative Declaration of a Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 01/04/2023.

Incident: Earthquake.

Incident Period: 12/20/2022 and continuing.

DATES: Issued on 01/04/2023.

Physical Loan Application Deadline Date: 03/06/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 10/04/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Humboldt.

Contiguous Counties:

California: Del Norte, Mendocino, Siskiyou, Trinity.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.625
Homeowners without Credit Available Elsewhere	2.313
Businesses with Credit Available Elsewhere	6.610
Businesses without Credit Available Elsewhere	3.305
Non-Profit Organizations with Credit Available Elsewhere	2.375

	Percent
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.305
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17749 2 and for economic injury is 17750 0.

The State which received an EIDL Declaration # is California.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2023–00182 Filed 1–6–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on a Land Release Request at Malden Regional Airport & Industrial Park (MAW), Malden, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release of airport land.

SUMMARY: The FAA proposes to rule and invites public comment on the request to release and sell a 1.11 acre parcel of federally obligated airport property at the Malden Regional Airport & Industrial Park (MAW), Malden, Missouri.

DATES: Comments must be received on or before February 8, 2023.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE–620G, 901 Locust, Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: David Blalock, Airport Manager, City of Malden Regional Airport & Industrial Park, 3077 Mitchell Drive, PO Box 411, Malden, MO 63863–0411, (573) 276–2279.

FOR FURTHER INFORMATION CONTACT: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE–620G, 901 Locust, Room 364, Kansas City, MO 64106, (816) 329–2603, *amy.walter@faa.gov.* The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release a 1.11 acre parcel of airport property at the Malden Regional Airport & Industrial Park (MAW) under the provisions of 49 U.S.C. 47107(h)(2). This is a Surplus Property Airport. The City of Malden requested a release from the FAA to sell a 1.11 acre parcel to Chris Hrabik for commercial development. The FAA determined this request to release and sell property at the Malden Regional Airport & Industrial Park (MAW) submitted by the Sponsor meets the procedural requirements of the FAA and the release and sale of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this notice.

The following is a brief overview of the request:

The Malden Regional Airport & Industrial Park (MAW) is proposing the release from obligations and sale of a 1.11 acre parcel of airport property. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the land at the Malden Regional Airport & Industrial Park (MAW) being changed from aeronautical to non-aeronautical use and release the lands from the conditions of the Airport Improvement Program Grant Agreement Grant Assurances in order to sell the land. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvement project for general aviation use.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may request an appointment to inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Malden City Hall.

Issued in Kansas City, MO on January 4, 2023.

James A. Johnson,

Director, FAA Central Region, Airports Division.

[FR Doc. 2023–00184 Filed 1–6–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0030]

Massachusetts Bay Transportation Authority's Request To Amend Its Positive Train Control System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on December 21, 2022, the Massachusetts Bay Transportation Authority (MBTA) submitted a request for amendment (RFA) to its FRA-certified positive train control (PTC) system. FRA is publishing this notice and inviting public comment on MBTA's RFA to its PTC system.

DATES: FRA will consider comments received by January 30, 2023. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES:

Comments: Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2010–0030. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/train-control/ptc/ptc-annual-and-quarterly-reports.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: In general, Title 49 United States Code (U.S.C.) Section 20157(h) requires FRA to certify that a host railroad's PTC system

complies with Title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTC Safety Plan (PTCSP), a host railroad must submit, and obtain FRA's approval of, an RFA to its PTC system or PTCSP under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal and train control system. Accordingly, this notice informs the public that, on December 21, 2022, MBTA submitted an RFA to its Advanced Civil Speed Enforcement System II (ACSES II), and that RFA is available in Docket No. FRA–2010–0030.

Interested parties are invited to comment on MBTA's RFA by submitting written comments or data. During FRA's review of this railroad's RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to a PTC system. *See* 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny a railroad's RFA at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.* To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2023–00123 Filed 1–6–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Fiscal Year 2023 Competitive Funding Opportunity: Areas of Persistent Poverty Program

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of Funding Opportunity (NOFO).

SUMMARY: The Federal Transit Administration (FTA) announces the opportunity to apply for a total of $20,041,870 in available funding ($20,000,000 in funding for Fiscal Year (FY) 2022 and $41,870 for FY 2021) for the Areas of Persistent Poverty Program (AoPP Program) (Federal Assistance Listing: 20.505). Funds will be awarded competitively for planning, engineering, or the development of technical or financing plans for projects to assist Areas of Persistent Poverty or Historically Disadvantaged Communities. FTA may award additional funding that is made available to the program prior to the announcement or project selections.

DATES: Complete proposals must be submitted electronically through the *Grants.gov* ''APPLY'' function by 11:59 p.m. Eastern Time on March 10, 2023.

FOR FURTHER INFORMATION CONTACT: Colby McFarland, FTA Office of Planning and Environment, 202–366–1648, or *colby.mcfarland@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION:

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A. Program Description

The AoPP Program provides funds to entities that are eligible recipients or subrecipients under 49 U.S.C. 5307, 5310, or 5311 to assist Areas of Persistent Poverty or Historically Disadvantaged Communities. Funding to implement the AoPP Program was appropriated by the Consolidated Appropriations Act, 2021 (Pub. L. 116–260), and the Consolidated Appropriations Act, 2022 (Pub. L. 117–103). This NOFO makes available $20,041,870 (of which $20,000,000 is funding from Fiscal Year (FY) 2022 and $41,870 is from FY 2021) that will be awarded through a competitive process, as described in this notice.

FTA will award grants to eligible applicants for planning, engineering, or development of technical or financing plans for projects eligible under chapter 53 of title 49, United States Code to assist Areas of Persistent Poverty or Historically Disadvantaged Communities. Applicants are encouraged to work with non-profits or other entities of their choosing to develop an eligible project. An eligible project for this NOFO is defined as a planning study (including a planning and environmental linkages study that advances the environmental analysis and review process as part of the metropolitan planning process), an engineering study, a technical study, or a financing plan.

This program supports FTA's strategic goals and objectives through the timely and efficient investment in public transportation for safety, economic strength and global competitiveness, equity, climate and sustainability, transformation, and organizational excellence. The AoPP Program grants are competitively awarded to local entities to assist Areas of Persistent Poverty as defined under section 6702(a)(1) of title 49, United States Code, or Historically Disadvantaged Communities. (See Section C of this NOFO for more information about eligibility.) This program also supports the President's initiatives to mobilize American ingenuity to build modern infrastructure and an equitable, clean energy future. By supporting increased transit access for environmental justice (EJ) populations, equity-focused community outreach and public engagement of underserved communities and adoption of equity-focused policies, reducing greenhouse gas emissions, and addressing the effects of climate change, FTA's AoPP Program advances the goals of Executive Order 13985: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government; Executive Order 13990: Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis; and Executive Order 14008: Tackling the Climate Crisis at Home and Abroad. FTA seeks to use the AoPP Program to encourage racial equity in two areas: (1) planning and policies related to racial equity and barriers to opportunity; and (2) engineering, or development of technical or financing plans, for project investments that either proactively address racial equity and barriers to opportunity, including automobile

dependence as a form of barrier, or redress prior inequities and barriers to opportunity. This objective also supports the Department's strategic goal related to infrastructure, with the potential for significantly enhancing environmental stewardship and community partnerships and reflects the goals of Executive Order 13985.

B. Federal Award Information

FTA intends to award all available funding in the form of grants to selected applicants responding to this NOFO. Additional funds made available for this program prior to project selection may be allocated to eligible projects. Funds will remain available for obligation for up to four fiscal years, not including the year in which the funds are allocated to projects.

Only proposals from eligible recipients for eligible activities will be considered for funding. FTA may establish a cap on the maximum grant award for selected projects. In response to a NOFO for the AoPP Program that closed on August 30, 2021, FTA received applications for 104 eligible projects requesting a total of $62,738,935. Of the 104 projects, 40 projects were selected and funded for a total of $16,217,744.

C. Eligibility Information

1. Eligible Applicants

Eligible applicants include entities that are eligible recipients or subrecipients under 49 U.S.C. 5307, 5310, or 5311 located in Areas of Persistent Poverty or Historically Disadvantaged Communities. Entities that are subrecipients or indirect recipients under these programs must apply through their ordinary pass-through entities or designated recipients. State departments of transportation may apply on behalf of eligible applicants within their States.

For Fiscal Year 2022 funds, ''Area of Persistent Poverty'' is defined by 49 U.S.C. 6702(a)(1) as, (1) any county (or equivalent jurisdiction) in which, during the 30-year period ending on November 15, 2021, 20 percent or more of the population continually lived in poverty, as measured by the 1990 decennial census, the 2000 decennial census, and the most recent annual small area income and poverty estimate of the Bureau of the Census; (2) any census tract with a poverty rate of not less than 20 percent, as measured by the 5-year data series available from the American Community Survey of the Bureau of the Census for the period of 2014 through 2018; and (3) any territory or possession of the United States.

For the purpose of the Fiscal Year 2022 NOFO, and consistent with the U.S. Office of Management and Budget's Interim Guidance for the Justice 40 Initiative, ''Historically Disadvantaged Communities'' include (a) certain qualifying census tracts, (b) any Tribal land, or (c) any territory or possession of the United States. As an additional resource, FTA provides a mapping tool to assist applicants in identifying whether a project is located in an Area of Persistent Poverty or an Historically Disadvantaged Community: *https://usdot.maps.arcgis.com/apps/dashboards/75febe4d9e6345ddb2c3ab42a4aae85f.*

An application may qualify under this NOFO if the recipient is located either in an Area of Persistent Poverty or an Historically Disadvantaged Community and the project assists an Area of Persistent Poverty or an Historically Disadvantaged Community. Applicants should determine whether their proposed project is in an Area of Persistent Poverty or Historically Disadvantaged Community and document this information in the supplemental form to the application and attach an accompanying map of the project area and the census tracts. This notice makes available $41,870 that was appropriated by the Consolidated Appropriations Act, 2021. The applicant and project eligibility requirements for these 2021 funds are the same as for the 2022 funds, except that, instead of applicants and projects being located in Areas of Persistent Poverty or Historically Disadvantaged Communities as defined above, applicants and projects must be located in (1) in a county that has consistently had greater than or equal to 20 percent of the population living in poverty over the 30-year period preceding the date of enactment of the Consolidated Appropriations Act, 2021 as measured by the 1990 and 2000 decennial census and the most recent Small Area Income and Poverty Estimates; or (2) in a census tract with a poverty rate of at least 20 percent as measured by the 2014–2018 5-year data series available from the American Community Survey of the Bureau of the Census; or (3) in any territory or possession of the United States. FTA anticipates that a number of applicants will be eligible under both the 2021 criteria and the 2022 criteria. FTA will use its discretion to offer these 2021 funds to a successful applicant that qualifies under both.

Eligible applicants must be able to demonstrate the requisite legal, financial, and technical capabilities to receive and administer Federal funds under this program.

As described in the Consolidated Appropriations Act, 2022, applicants are encouraged to work with non-profits or other entities of their choosing to develop planning, technical, engineering, or financing plans, and applicants are encouraged to partner with non-profits that can assist with making projects low or no emissions. If an application that involves such a partnership is selected for funding, the applicant's process for selecting the non-profit or other non-governmental partners must satisfy the requirements for a competitive procurement under 49 U.S.C. 5325(a). An applicant may undertake a competitive selection process that satisfies the requirements of 49 U.S.C. 5325(a) prior to applying for an AoPP award and name the selected entities in the application. In that event, applicants are advised that any changes to the proposed partnership will require written FTA approval, changes must be consistent with the scope of the approved project and may necessitate a competitive procurement.

2. Cost Sharing or Matching

The minimum Federal share for projects selected under the AoPP Program is 90 percent of the net total project cost. The non-Federal share will be no more than 10 percent of the net total project cost (not 10 percent of the requested grant amount). Cost sharing is not required, and an application may request up to 100 percent Federal funding. However additional consideration will be given to those projects for which local funds have already been made available or reserved.

Eligible sources of non-Federal match include the following: cash from non-government sources other than revenues from providing public transportation services; revenues derived from the sale of advertising and concessions; amounts received under a service agreement with a State or local social service agency or private social service organization; revenues generated from value capture financing mechanisms; or funds from an undistributed cash surplus; replacement or depreciation cash fund or reserve; or new capital. In addition, transportation development credits or documentation of in-kind match may be used as local match if identified and documented in the application.

3. Eligible Projects

Under the AoPP Program, eligible projects are planning, engineering, or development of technical or financing plans for projects eligible under Chapter 53 of title 49, United States Code that will assist Areas of Persistent Poverty or Historically Disadvantaged

Communities. For example, these activities may include planning, engineering, or development of technical or financing plans for improved transit services; new transit routes; engineering for transit facilities and improvements to existing facilities; innovative technologies; planning for low or no emission buses; planning for a new bus facility or intermodal center that supports transit services; integrated fare collections systems; or coordinated public transit human service transportation plans to improve transit service in an Area of Persistent Poverty or Historically Disadvantaged Community, or to provide new service such as transportation for services to address the opioid epidemic, as well as increase access to environmental justice populations, while reducing greenhouse gas emissions and the effects of climate change. An eligible project also may be a planning and environmental linkages study that advances the environmental analysis and review process as part of the metropolitan planning process. Ineligible projects are capital, maintenance, or operating costs of any kind are not eligible for funding under the AoPP Program. Procurement of vehicles or equipment and support of operations and maintenance of systems are also ineligible activities.

D. Application and Submission Information

1. Address To Request Application Package

Applications must be submitted electronically through *Grants.gov*. General information for accessing and submitting applications through *Grants.gov* can be found at *https://www.transit.dot.gov/funding/grants/applying/applying-fta-funding* along with specific instructions for the forms and attachments required for submission. Mail or fax submissions of completed proposals will not be accepted.

2. Content and Form of Application Submission

a. Proposal Submission

A complete proposal submission for each program consists of two forms: (1) the SF–424 Application for Federal Assistance; and (2) the supplemental form for the FY 2022 AoPP Program. They can be downloaded from *Grants.gov* or the FTA website at *https://www.transit.dot.gov/grant-programs/areas-persistent-poverty-program.* Failure to submit the information as requested can delay review or disqualify the application. The supplemental form and any supporting documents must be attached to the ''Attachments'' section of the SF–424. The application must include responses to all sections of the SF–424 Application for Federal Assistance and the supplemental form, unless indicated as optional. The information on the supplemental form will be used to determine applicant and project eligibility for the program, and to evaluate the proposal against the selection criteria described in Section E of this NOFO.

Submissions must include the following attachments:

i. A completed SF–424 Application for Federal Assistance form and supplemental form for the AoPP Program;

ii. A map of the proposed study area with which to confirm alignment between the proposed study area and an Area of Persistent Poverty or Historically Disadvantaged Community;

iii. Documentation of any partnerships between the applicant and other organizations to carry out the proposed activities. Documentation may consist of a memorandum of agreement or letter of intent signed by all parties that describes the parties' roles and responsibilities in the proposed project; and

iv. Documentation of any funding commitments for the proposed work.

FTA will accept only one supplemental form per SF–424 submission. FTA encourages States and other applicants to consider submitting a single supplemental form that includes multiple activities to be evaluated as a consolidated proposal. If a State or other applicant chooses to submit separate proposals for individual consideration by FTA, each proposal must be submitted using a separate SF–424 and supplemental form.

Applicants may attach additional supporting information to the SF–424 submission, including but not limited to letters of support, project budgets, fleet status reports, or excerpts from relevant planning documents. Supporting documentation must be described and referenced by file name in the appropriate response section of the supplemental form, or it may not be reviewed.

Information such as the applicant's name, Federal amount requested, non-Federal match amount, and description of the study area are requested in varying degrees of detail on both the SF–424 form and supplemental form. Applicants must fill in all fields unless stated otherwise on the forms. Applicants should use both the ''Check Package for Errors'' and the ''Validate Form'' buttons on both forms to check all required fields and to ensure that the Federal and local amounts specified are consistent. In the event of errors with the supplemental form, FTA recommends saving the form on your computer and ensuring that JavaScript is enabled in your PDF editor. The information listed below must be included on the SF–424 and supplemental form for the AoPP Program funding applications.

b. Application Content

The SF–424 and the supplemental form will prompt applicants for the following items:

1. Provide the name of the lead applicant and, if applicable, the specific co-sponsors submitting the application.
2. Provide the applicant's Unique Entity ID number (provided by SAM).
3. Provide contact information including: Contact name, title, address, phone number, and email address.
4. Specify the Congressional districts where the planning project will take place.
5. Identify the project title and project scope to be funded, including anticipated substantial deliverables and the milestones for when they will be provided to FTA.
6. Identify and describe the eligible project that meets the requirements of Section C, of this notice, including a detailed description of the need for planning, engineering, or development of technical, or financial planning activities.
7. Address each evaluation criterion separately, demonstrating how the project responds to each criterion as described in Section E and how the project will support the AoPP Program objectives.
8. Provide a line-item budget for the project, with enough detail to indicate the various key components of the project.
9. Identify the Federal amount requested.
10. Document the matching funds, including the amount and source of the match (may include local or private sector financial participation in the project). Describe whether the matching funds are committed or planned and include documentation of the commitments.
11. Provide an explanation of the scalability of the project.
12. Address whether other Federal funds have been sought or received for the comprehensive planning project.
13. Provide a project schedule including major task, deliverables, and completion. In addition, provide the local steps required for including the project in the relevant state,

metropolitan, or local planning documents and a brief explanation on how the proposed project aligns with such plans (*e.g.,* Unified Planning Work Program).

14. Propose performance criteria for the development and implementation of the proposed activities funded under the AoPP Program.

15. Identify potential State, local, or other impediments to the deliverables of the AoPP Program-funded work and their implementation, and how the impediments will be addressed.

16. Describe how the proposed activities address climate change. Applicants should identify any air quality nonattainment or maintenance areas under the Clean Air Act in the planning or study area. Nonattainment or maintenance areas should be limited to the following applicable National Ambient Air Quality Standards criteria pollutants: carbon monoxide, ozone, and particulate matter 2.5 and 10. The U.S. Environmental Protection Agency's Green Book (available at *https://www.epa.gov/green-book*) is a publicly-available resource for nonattainment and maintenance area data. This consideration will further the goals of Executive Order 13990: Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, and Executive Order 14008: Tackling the Climate Crisis at Home and Abroad.

17. Describe how the proposed activities address environmental justice populations, racial equity, and barriers to opportunity.

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant is required to: (1) be registered in SAM before submitting an application; (2) provide a valid unique entity identifier in its application; and (3) continue to maintain an active SAM registration with current information at all times during which the applicant has an active Federal award or an application or plan under consideration by FTA. These requirements do not apply if the applicant has an exemption approved by FTA pursuant to 2 CFR 25.110(c) or is otherwise excepted from registration requirements. FTA may not make an award until the applicant has complied with all applicable unique entity identifiers and SAM requirements. If an applicant has not fully complied with the requirements by the time FTA is ready to make an award, FTA may determine that the applicant is not qualified to receive an award and use that determination as a basis for making a federal award to another applicant.

All applicants must provide a unique entity identifier provided by SAM. Registration in SAM may take approximately 3–5 business days, but FTA recommends allowing ample time, up to several weeks, for completion of all steps. For additional information on obtaining a unique entity identifier, please visit *www.sam.gov.*

4. Submission Dates and Times

Project proposals must be submitted electronically through *Grants.gov* by 11:59 p.m. eastern time on March 10, 2023. *Grants.gov* attaches a time stamp to each application at the time of submission. Proposals submitted after the deadline will be considered only under extraordinary circumstances not under the applicant's control. Mail and fax submissions will not be accepted.

Within 48 hours after submitting an electronic application, the applicant should receive two email messages from *Grants.gov*: (1) confirmation of successful transmission to *Grants.gov*; and (2) confirmation of successful validation by *Grants.gov*. FTA will then validate the application and will attempt to notify any applicants whose applications could not be validated. If the applicant does not receive confirmation of successful validation or a notice of failed validation or incomplete materials, the applicant must address the reason for the failed validation, as described in the email notice, and resubmit before the submission deadline. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated, and check the box on the supplemental form indicating this is a resubmission. An application that is submitted at the deadline and cannot be validated will be marked as incomplete, and such applicants will not receive additional time to re-submit.

FTA urges applicants to submit their applications at least 96 hours prior to the due date to allow time to receive the validation messages and to correct any problems that may have caused a rejection notification. *Grants.gov* scheduled maintenance and outage times are announced on the *Grants.gov* website. Deadlines will not be extended due to scheduled maintenance or outages.

Applicants are encouraged to begin the registration process on the *Grants.gov* site well in advance of the submission deadline. Registration in *Grants.gov* is a multi-step process, which may take several weeks to complete before an application can be submitted. Applicants who are already registered in *Grants.gov* may be required to take steps to keep their registrations up to date before submissions can be made successfully: (1) registration in SAM is renewed annually, and (2) persons making submissions on behalf of the Authorized Organization Representative (AOR) must be authorized in *Grants.gov* by the AOR to make submissions.

5. Funding Restrictions

Funds under this NOFO cannot be used to reimburse applicants for otherwise eligible expenses incurred prior to FTA award of a grant agreement until FTA has issued pre-award authority for selected projects. FTA will issue pre-award authority to incur costs for selected projects beginning on the date that project selections are announced. FTA does not provide pre-award authority for competitive funds until projects are selected, and even then, there are Federal requirements that must be met before costs are incurred. FTA will issue specific guidance to awardees regarding pre-award authority at the time of selection. For more information about FTA's policy on pre-award authority, please see the most recent Apportionment Notice on FTA's website. Allowable direct and indirect expenses must be consistent with the Governmentwide Uniform Administrative Requirements and Cost Principles (2 CFR part 200) and FTA Circular 5010.1E.

6. Other Submission Requirements

Applicants are strongly encouraged to identify scaled funding options in case insufficient funding is available to fund a project at the full requested amount. If an applicant indicates that a project is scalable, the applicant should provide the minimum total project cost and Federal amount that will fund an eligible project that achieves the objectives of the program and meets all relevant program requirements. The applicant must provide a clear explanation of how the project would be affected by a reduced award. FTA may award a lesser amount regardless of whether a scalable option is provided.

E. Application Review Information

1. Criteria

Project proposals will be evaluated primarily on the responses provided in the supplemental form. Additional information may be provided to support the responses; however, any additional documentation must be directly referenced on the supplemental form, including the file name where the additional information can be found. Applications will be evaluated based on

the quality and extent to which the following evaluation criteria are addressed.

a. Demonstration of Need

Applications will be evaluated based on the quality and extent to which they demonstrate how the proposed activities will support planning, engineering, or development of technical or financing plans that would result in a project eligible for funding under chapter 53 of title 49, United States Code. Applications should clearly present the need for the proposed project and provide substantiated background information such as the level of poverty in the area, the population size, the extent of unmet access and mobility connections to critical employment, education, or medical destinations as the result of inadequate transit service or lack of coordination among service providers. Applications should also consider how activities will affect climate change and address environmental justice challenges.

b. Demonstration of Benefits

Applications will be evaluated based on how well they describe how the proposed planning, engineering, or development of technical or financing plans and address one or more of the following: the existing condition of the transit system, improved reliability of transit service for its riders, enhanced access and mobility within the service area, accelerating innovation in Areas of Persistent Poverty or Historically Disadvantaged Communities to serve unmet needs, reducing barriers to affordable housing or any other qualitative benefits that would improve the transit efficiency and impact the quality of life for the community. The following factors will be considered:

i. System Condition. FTA will evaluate the potential for the planning, engineering, or development of technical or financing plans to lead to an improvement in the condition of the transit system in Areas of Persistent Poverty or Historically Disadvantaged Communities.

ii. Service Reliability. FTA will evaluate the potential for the planning, engineering, or development of technical or financing plans to lead to a reduction in the frequency of breakdowns or other service interruptions caused by the age and condition of the agency's transit vehicle fleet and improve system reliability.

iii. Enhanced Access and Mobility. FTA will evaluate the potential for the planning, engineering, or development of technical or financing plans that lead to improved access to jobs, education, and health care services and mobility for the transit riding public, such as through increased reliability, improved headways, creation of new transportation choices, or eliminating gaps in the current route network or any other qualitative benefits that would improve the transit efficiency and impact the quality of life for the community.

iv. Accelerating Innovation. FTA will evaluate the potential for the planning, engineering, or development of technical or financing plans to accelerate the introduction of innovative technologies or practices such as integrated fare payment systems permitting complete trips or advancements to propulsion systems. Innovation can also include practices such as new public transportation operational models, financial or procurement arrangements, or value capture strategies. FTA views value capture strategies as public financing tools that recover a share of the value transit creates. Examples of value capture strategies used for transit can include the following: tax increment financing, special assessments, and joint development. AoPP funds can be used for plans that include value capture approaches.

v. Barriers to Low Income Housing. FTA will evaluate the degree to which the planning study, engineering study, or development of technical or financial plans identify proposed actions that reduce regulatory barriers that unnecessarily raise the costs of housing development or impede the development of affordable housing.

vi. Regional Support. Applicants should provide evidence of regional or local support for the proposed project. Documentation may include support letters from local and regional planning organizations, local governmental officials, public agencies, or non-profit or for-profit private sector supporters attesting to the need for the project.

c. Funding Commitments

Applicants must identify the source of any non-Federal cost-share or in-kind contribution and describe whether such contributions are currently available for the project or will need to be secured if the project is selected for funding. FTA will consider the availability of the non-Federal cost-share as evidence of local financial commitment to the project. Additional consideration will be given to those projects for which local funds have already been made available or reserved. Applicants should submit evidence of the availability of funds for the project (*e.g.,* by including a board resolution, letter of support from the State, a budget document highlighting the line item or section committing funds to the proposed project, or other documentation of the source of non-Federal funds).

d. Project Implementation Strategy

FTA will evaluate the strength of the work plan, schedule, and process included in an application based on the following factors:

i. Extent to which the schedule contains sufficient detail, identifies all steps needed to implement the work proposed, and is achievable;

ii. Extent of partnerships, including with non-public sector entities, equity-focused community outreach and meaningful public engagement of underserved communities, see: *https://www.transportation.gov/public-involvement;* and

iii. The partnerships' technical capability to develop, adopt, and implement the plans, based on FTA's assessment of the applicant's description of the policy formation, implementation, and financial roles of the partners, and the roles and responsibilities of proposed staff.

e. Technical, Legal, and Financial Capacity

Applicants must demonstrate they have the technical, legal, and financial capacity to undertake the project. FTA will review relevant oversight assessments and records to determine whether there are any outstanding legal, technical, or financial issues with the applicant that would affect the outcome of the proposed project. Applicants with unresolved legal, technical, or financial compliance issues from an FTA compliance review or Federal grant-related Single Audit finding must explain how corrective actions taken will mitigate negative impacts on the proposed project.

2. Review and Selection Process

A technical evaluation committee will verify each proposal's eligibility and evaluate proposals based on the published evaluation criteria. FTA staff may request additional information from applicants, if necessary. Taking into consideration the findings of the technical evaluation committee, the FTA Administrator will determine the final selection of projects for program funding. In determining the allocation of program funds, FTA may consider geographic diversity and the applicant's receipt of other competitive awards. FTA may also consider capping the amount a single applicant may receive.

a. Climate Change and Sustainability

In further support of Executive Order 14008, FTA will give priority consideration to applications that create significant community benefits relating to the environment, including those projects that address greenhouse gas emissions and climate change impacts. FTA encourages applicants to demonstrate whether they have considered climate change and environmental justice in terms of the transportation planning process or anticipated design components with outcomes that address climate change (*e.g.,* resilience or adaptation measures). The application should describe what specific climate change or environmental justice activities have been incorporated, including whether a project supports a Climate Action Plan, an equitable development plan has been prepared, and a tool such as EPA's EJSCREEN at: *https://www.epa.gov/ejscreen* have been applied in project planning. Applicants could also address how a project is related to housing or land use reforms to increase density to reduce climate impacts. The application should also describe specific and direct ways the project will mitigate or reduce climate change impacts including any components that reduce emissions, promote energy efficiency, incorporate electrification or low emission or zero emission vehicle infrastructure, increase resiliency, recycle or redevelop existing infrastructure or if located in a floodplain be constructed or upgraded consistent with the Federal Flood Risk Management Standard, to the extent consistent with current law.

b. Racial Equity and Barriers to Opportunity

FTA will also give priority consideration to applications that advance racial equity in two areas: (1) planning and policies related to racial equity and overcoming barriers to opportunity; and (2) project investments that either proactively address racial equity and barriers to opportunity, including automobile dependence as a form of barrier, or redress prior inequities and barriers to opportunity. Applicants could also address how a project is related to housing or land use reforms to address historic barriers to opportunity. This objective has the potential to enhance environmental stewardship and community partnerships, and reflects Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. FTA encourages the applicant to include sufficient information to evaluate how the applicant will proactively address and advance racial equity and address barriers to opportunity. The applicant should describe any transportation plans or policies related to equity and barriers to opportunity they are implementing or have implemented in relation to the proposed project, along with the specific project investment details necessary for FTA to evaluate if the investments are being made either proactively to advance racial equity and address barriers to opportunity or redress prior inequities and barriers to opportunity. All project investment costs for projects that are related to racial equity and barriers to opportunity should be summarized. FTA also encourages applicants to consider how the project will address the challenges faced by individuals and underserved communities in rural areas.

c. Justice40 Initiative and Environmental Justice

In support of Executive Order 14008, and consistent with OMB's Interim Guidance for the Justice40 Initiative, Historically Disadvantaged Communities include (a) certain qualifying census tracts, (b) any Tribal land, or (c) any territory or possession of the United States. FTA is providing a mapping tool to assist applicants in identifying whether a project is located in an Area of Persistent Poverty or an Historically Disadvantaged Community at *https://usdot.maps.arcgis.com/apps/dashboards/75febe4d9e6345ddb2c3ab42a4aae85f.* Use of this mapping tool is optional; however, FTA encourages applicants to provide an image or screen shot of the map tool outputs, or alternatively, consistent with OMB's Interim Guidance, applicants can supply quantitative, demographic data of their ridership demonstrating the percentage of their ridership that meets the criteria described in Executive Order 14008 for disadvantaged communities as well as describe the environmental justice population located within the service area. Examples of Historically Disadvantaged Communities that an applicant could address using geographic or demographic information include low income, high or persistent poverty, high unemployment and underemployment, racial and ethnic residential segregation, linguistic isolation, or high housing cost burden and substandard housing. Additionally, in support of the Justice40 Initiative, the applicant should also provide evidence of strategies that the applicant has used in the planning process to seek out and consider the needs of those traditionally disadvantaged and underserved by existing transportation systems. For technical assistance using the mapping tool, please contact *GMO@dot.gov.*

3. Integrity and Performance Review

Prior to making an award with a total amount of Federal share greater than the simplified acquisition threshold (currently $250,000), FTA is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information Systems (FAPIIS) accessible through SAM. An applicant may review and comment on information about itself that a Federal awarding agency previously entered. FTA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.206.

F. Federal Award Administration Information

1. Federal Award Notices

FTA will announce the final project selections on the FTA website. Selectees should contact their FTA regional offices for additional information regarding allocations for projects under the AoPP Program.

2. Administrative and National Policy Requirements

a. Planning

FTA encourages applicants to engage the appropriate State departments of transportation, Regional Transportation Planning Organization or Metropolitan Planning Organization(s) (MPOs) in areas likely to be served by the funds made available under this program. Selected projects must be incorporated into the long-range plans or unified planning work programs upon award and prior to being eligible for pre-award authority. Applicants can find contact information for the applicable MPO here (*https://www.planning.dot.gov/MPO/*).

b. Standard Assurances

The applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, directives, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The applicant understands that

Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise. The applicant must submit the Certifications and Assurances before receiving a grant if it does not have current certifications on file.

i. Civil Rights Requirements

Applications should demonstrate that the recipient has a plan for compliance with civil rights obligations and nondiscrimination laws, including Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act, and accompanying regulations. This should include a current Title VI program plan and a completed Community Participation Plan (alternatively called a Public Participation Plan and often part of the overall Title VI program plan), if applicable. Applicants who have not sufficiently demonstrated the conditions of compliance with civil rights requirements will be required to do so before receiving funds. Recipients of Federal transportation funding will be required to comply fully with the DOT's regulations and guidance for the ADA and all relevant civil rights requirements. The Department's and FTA's Office of Civil Rights will work with awarded grant recipients to ensure full compliance with Federal civil rights requirements.

c. Disadvantaged Business Enterprise

FTA requires that its recipients receiving planning, capital, or operating assistance that will award prime contracts exceeding $250,000 in FTA funds in a Federal fiscal year comply with Department of Transportation Disadvantaged Business Enterprise (DBE) program regulations (49 CFR part 26). Applicants should expect to include any funds awarded, excluding those to be used for vehicle procurements, in setting their overall DBE goal.

d. Pre-Award Authority

FTA will issue specific guidance to recipients regarding pre-award authority at the time of selection. FTA does not provide pre-award authority for competitive funds until projects are selected and even then, there are Federal requirements that must be met before costs are incurred. Funds under this NOFO cannot be used to reimburse applicants for otherwise eligible expenses incurred prior to FTA award of a grant agreement until FTA has issued pre-award authority for selected projects, or unless FTA has issued a ''Letter of No Prejudice'' for the project before the expenses are incurred. For more information about FTA's policy on pre-award authority, please see the most recent Apportionment Notice at: *https://www.transit.dot.gov/funding/apportionments/current-apportionments.*

e. Grant Requirements

If selected, awardees will apply for a grant through FTA's Transit Award Management System (TrAMS). Recipients of AoPP Program funds are subject to the grant requirements of the Metropolitan Transportation Planning program (49 U.S.C. 5303) or Statewide and Non-Metropolitan Transportation Planning (49 U.S.C. 5304), including those of FTA Circular 8100.1D and Circular 5010.1E. All competitive grants, regardless of the award amount, will be subject to the Congressional Notification and release process. Technical assistance regarding these requirements is available from each FTA regional office.

When applying for an award under this Program, eligible applicants and sub-recipients who are not direct recipients, or who have limited experience or access to FTA's Transit Award Management System (TrAMS), must secure the commitment of an active FTA direct recipient to apply for funding on their behalf through TrAMS if they are selected for an AoPP funding award. Documentation of such a commitment must be included in the application.

3. Reporting

Post-award reporting requirements include submission of Federal Financial Reports and Milestone Progress Reports in FTA's electronic grants management system on a quarterly basis. Applicants should include any goals, targets, and indicators referenced in their application to the project in the Executive Summary of the TrAMS application. Awardees must also submit copies of the substantial deliverables identified in the work plan to the FTA regional office at the corresponding milestones.

FTA is committed to making evidence-based decisions guided by the best available science and data. In accordance with the Foundations for Evidence-Based Policymaking Act of 2018 (Pub. L. 115–435), FTA may use information submitted in discretionary funding applications; information in FTA's Transit Award Management System (TrAMS), including grant applications, Milestone Progress Reports (MPRs), Federal Financial Reports (FFRs); transit service, ridership and operational data submitted in FTA's National Transit Database; documentation and results of FTA oversight reviews, including triennial and state management reviews; and other publicly available sources of data to build evidence to support policy, budget, operational, regulatory, and management processes and decisions affecting FTA's grant programs.

As part of completing the annual Certifications and Assurances required of FTA grant recipients, a successful applicant must report on the suspension or debarment status of itself and its principals. If the award recipient's active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceed $10,000,000 for any period of time during the period of performance of an award made pursuant to this Notice, the recipient must comply with the Recipient Integrity and Performance Matters reporting requirements described in appendix XII to 2 CFR part 200.

G. Federal Awarding Agency Contacts

For program-specific questions, please contact Colby McFarland, Office of Planning and Environment, (202) 366–1648, email: *Colby.McFarland@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS). Any addenda that FTA releases on the application process will be posted at *https://www.transit.dot.gov/grant-programs/areas-persistent-poverty-program.* To ensure applicants receive accurate information about eligibility or the program, the applicant is encouraged to contact FTA directly, rather than through intermediaries or third parties. FTA staff may also conduct briefings on the FY 2023 competitive grants selection and award process upon request. Contact information for FTA's regional offices can be found on FTA's website at *https://www.transit.dot.gov/about/regional-offices/regional-offices.*

H. Other Information

User friendly information and resources regarding DOT's discretionary grant programs relevant to rural applicants can be found on the Rural Opportunities to Use Transportation for Economic Success (ROUTES) website at *https://transportation.gov/rural.* This program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' For assistance with *Grants.gov* please contact *Grants.gov* by phone at 1–800–

518–4726 or by email at *support@grants.gov.*

Nuria I. Fernandez,

Administrator.

[FR Doc. 2023–00168 Filed 1–6–23; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Interest Rate Paid on Cash Deposited To Secure U.S. Immigration and Customs Enforcement Immigration Bonds

AGENCY: Departmental Offices, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning January 1, 2023, and ending on March 31, 2023, the U.S. Immigration and Customs Enforcement Immigration Bond interest rate is 3 per centum per annum.

DATES: Rates are applicable January 1, 2023 to March 31, 2023.

ADDRESSES: Comments or inquiries may be mailed to Will Walcutt, Supervisor, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Services, Parkersburg, West Virginia 26106–1328.

You can download this notice at the following internet addresses: <*http://www.treasury.gov*> or <*http://www.federalregister.gov*>.

FOR FURTHER INFORMATION CONTACT: Ryan Hanna, Manager, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia 26106–1328, (304) 480–5120; Will Walcutt, Supervisor, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Services, Parkersburg, West Virginia 26106–1328, (304) 480–5117.

SUPPLEMENTARY INFORMATION: Federal law requires that interest payments on cash deposited to secure immigration bonds shall be ''at a rate determined by the Secretary of the Treasury, except that in no case shall the interest rate exceed 3 per centum per annum.'' 8 U.S.C. 1363(a). Related Federal regulations state that ''Interest on cash deposited to secure immigration bonds will be at the rate as determined by the Secretary of the Treasury, but in no case will exceed 3 per centum per annum or be less than zero.'' 8 CFR 293.2. Treasury has determined that interest on the bonds will vary quarterly and will accrue during each calendar quarter at a rate equal to the lesser of the average of the bond equivalent rates on 91-day Treasury bills auctioned during the preceding calendar quarter, or 3 per centum per annum, but in no case less than zero. [FR Doc. 2015–18545]. In addition to this Notice, Treasury posts the current quarterly rate in Table 2b—Interest Rates for Specific Legislation on the TreasuryDirect website.

The Deputy Assistant Secretary for Public Finance, Gary Grippo, having reviewed and approved this document, is delegating the authority to electronically sign this document to Heidi Cohen, Federal Register Liaison for the Department, for purposes of publication in the **Federal Register**.

Heidi Cohen,

Federal Register Liaison.

[FR Doc. 2023–00153 Filed 1–6–23; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App.2, that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet at the Oahu Vet Center, 1298 Kukila St., Honolulu, HI 96818. The meeting sessions will begin and end as follows:

Dates	Times
February 8, 2023	9 a.m. to 3 p.m. Hawaii Standard Time (HST).
February 9, 2023	9 a.m. to 12:30 p.m. HST.

All sessions will be open to the public. For interested parties who cannot attend in person, this meeting will also be available by videoconference by connecting to Webex at the following URLs:

February 8, 2023, 9 a.m. to 3 p.m. (HST): *https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=m180644b0049f6bc52a42db08d8b7bccb* or join by phone: 1–833–558–0712 Toll-free; meeting number (access code): 2764 095 6460. Meeting password: GWVets1991!Day1

February 9, 2023, 9 a.m. to 12:30 p.m. (HST): *https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=m782f699f53f6e789f4459322cef9cdaa* or, join by phone: 1–833–558–0712 Toll-free; meeting number (access code): 2763 890 9669. Meeting password: GWVets1991!Day2

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans, and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Gulf War in 1990–91.

The Committee will review VA program activities related to Gulf War Veterans' illnesses and updates on relevant scientific research published since the last Committee meeting. This meeting will focus on 1990–91 military exposures, exposure assessment, and the health effects of genes, lifestyle and military exposures.

The meeting will include time reserved for public comments 30 minutes before the meeting closes each day. Individuals who wish to address the Committee may submit a 1–2 page summary of their comments for inclusion in the official meeting record. Members of the public may submit written statements for the Committee's review or seek additional information by contacting Dr. Karen Block, Designated Federal Officer, at 202–443–5600, or at *Karen.Block@va.gov*.

Dated: January 3, 2023.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–00135 Filed 1–6–23; 8:45 am]

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LIST OF PUBLIC LAWS

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