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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0162; Project Identifier MCAI–2022–01559–G; Amendment 39–22335; AD 2023–03–10]

RIN 2120–AA64

Airworthiness Directives; Schempp-Hirth Flugzeugbau GmbH Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Schempp-Hirth Flugzeugbau GmbH Model Duo Discus and Duo Discus T gliders. This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as cracks in the connecting tube of the elevator U-bracket of the horizontal tail, which could compromise the stiffness of the elevator control system and of the attachment of the horizontal tail. This AD requires repetitively inspecting the elevator U-bracket for cracks and broken weld seams, the rear connection between the horizontal tail and the rear attachment on the fuselage for play and softness, and the foam support for compression between the vertical and horizontal tail, and replacing or repairing damaged parts as applicable. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 24, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 24, 2023.

The FAA must receive comments on this AD by March 27, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0162; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the MCAI, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Schempp-Hirth, Krebenstrasse 25, Kirchheim unter Teck, Germany; phone: +49 7021 7298–0; email: *info@schempp-hirth.com;* website: *schempp-hirth.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–0162.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; email: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–0162; Project Identifier MCAI–2022–01559–G'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD 2022–0242–E, dated December 7, 2022 (referred to after this as ''the MCAI''), to correct an unsafe condition on all Schempp-Hirth Flugzeugbau GmbH Model Arcus, Duo Discus, Duo Discus C, Nimbus-4, Nimbus-4D, Arcus M, Arcus T, Duo Discus T, Nimbus-4M, Nimbus-4T, Nimbus-4DM, and Nimbus-4DT gliders. The MCAI states that instances have

been reported of finding cracks in the connecting tube of the elevator U-bracket of the horizontal tail of certain gliders. The MCAI requires a one-time inspection of the elevator U-bracket and the rear connection between the horizontal tail and the rear attachment on the fuselage for damage and repair or replacement of damaged parts as applicable. The MCAI also requires amendment of the glider's applicable aircraft flight manual (AFM).

This condition, if not detected and corrected, could lead to failure of the elevator control system, loss of the horizontal tail attachment, and consequent loss of glider control. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0162.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Schempp-Hirth Flugzeugbau GmbH Working Instructions Technical Note 396–22, 380–3, 868–24, 890–18, A532–10, Revision 0, dated February 28, 2022 (issued as one document), which specifies procedures for inspecting the elevator U-bracket and the rear connection between the horizontal tail and the rear attachment on the fuselage for damage and repairing or replacing damaged parts.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information described above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of these same type designs.

AD Requirements

This AD requires accomplishing the actions specified in the MCAI, except as discussed under ''Differences Between this AD and the MCAI.''

Differences Between This AD and the MCAI

The MCAI applies to Schempp-Hirth Flugzeugbau GmbH Model Arcus, Duo Discus C, Nimbus-4, Nimbus-4D, Arcus M, Arcus T, Nimbus-4M, Nimbus-4T, Nimbus-4DM, and Nimbus-4DT gliders, and this AD does not because those models do not have an FAA type certificate.

The MCAI requires the incorporation of revisions to the flight manual that would instruct the pilot to inspect the horizontal tail and elevator U-bracket during each pre-flight walk-around. In the MCAI, a licensed mechanic performs the inspection required for those gliders with 1,000 or more hours time-in-service (TIS) on the elevator U-bracket as of the effective date of the MCAI. Thereafter a pilot performs this inspection during the pre-flight walk-around. For those gliders with less than 1,000 hours TIS on the elevator U-bracket as of the effective date of the MCAI, the MCAI relies solely on the pilot to perform the inspection during the pre-flight walk-around. Since the FAA regulations do not allow a pilot to perform this type of inspection, this AD will require the inspection to be performed by a licensed mechanic for all gliders before further flight and thereafter at 12-month intervals.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because damage in the elevator U-bracket or the rear connection between the horizontal tail and the rear attachment on the fuselage could happen without advanced warning and result in failure of the elevator control system, loss of the horizontal tail attachment, and consequent loss of glider control. Therefore, the inspection and any necessary replacement or repair must be accomplished before further flight. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forego notice and comment.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 31 gliders of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect elevator U-bracket	4 work-hours × $85 per hour = $340 ...	Not Applicable	$340 per inspection cycle	$10,540 per inspection cycle.
Inspect horizontal tail attachment.	2 work-hours × $85 per hour = $170 ...	Not Applicable	$170 per inspection cycle	$5,270 per inspection cycle.
Inspect foam compression	1 work-hour × $85 per hour = $85	Not Applicable	$85 per inspection cycle	$2,635 per inspection cycle.

The FAA estimates the following costs to do any necessary replacement that would be required based on the results of the inspection. The agency has no data to determine the number of gliders that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace elevator U-bracket	2 work-hours × $85 per hour = $170	$500	$670
Replace foam	2 work-hours × $85 per hour = $170	100	270

Since the repair instructions for the horizontal tail attachment could vary significantly from glider to glider if discrepancies are found during the inspection, the FAA has no data to determine the number of gliders that would need follow-on actions or what the cost per glider would be.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have 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.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866, and

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2023–03–10 Schempp-Hirth Flugzeugbau GmbH: Amendment 39–22335; Docket No. FAA–2023–0162; Project Identifier MCAI–2022–01559–G.

(a) Effective Date

This airworthiness directive (AD) is effective February 24, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Schempp-Hirth Flugzeugbau GmbH Model Duo Discus and Duo Discus T gliders, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2730, Elevator Control System.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as cracks in the connecting tube of the elevator U-bracket of the horizontal tail, which could compromise the stiffness of the elevator control system and of the attachment of the horizontal tail. The FAA is issuing this AD to address this condition. The unsafe condition, if not addressed, could result in failure of the elevator control system, loss of the horizontal tail attachment, and consequent loss of glider control.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

(1) Before further flight after the effective date of this AD and thereafter at intervals not to exceed 12 months, inspect the elevator U-bracket for indications of cracking by following paragraphs 1.a) and 1.b) of Schempp-Hirth Flugzeugbau GmbH Working Instructions Technical Note 396–22, 380–3, 868–24, 890–18, A532–10, Revision 0, dated February 28, 2022 (issued as one document). For the purposes of this AD, indications of cracking include elastic and permanent twisting.

Note 1 to paragraph (g)(1): Technical Note Schempp-Hirth Flugzeugbau GmbH Technical Note 396–22; and Schempp-Hirth Flugzeugbau GmbH Technical Note 890–18; both Revision 1; both dated October 13, 2022, contain information related to this AD.

Note 2 to paragraph (g)(1): This service information contains German to English translation. The European Union Aviation Safety Agency (EASA) used the English translation in referencing the document from Schempp-Hirth Flugzeugbau GmbH. For enforceability purposes, the FAA will refer to the Schempp-Hirth Flugzeugbau GmbH service information in English as it appears on the document.

(i) If indications of cracking are present, remove the elevator U-bracket and inspect it for any crack and broken weld seam by following paragraph 1.c) of Schempp-Hirth Flugzeugbau GmbH Working Instructions Technical Note 396–22, 380–3, 868–24, 890–18, A532–10, Revision 0, dated February 28, 2022 (issued as one document).

(ii) If no indications of cracking are present and you do not have suitable tools such as a mirror, flashlight, borescope, or equivalent to do the inspection required in paragraph (g)(1)(i) of this AD, remove the elevator U-bracket and inspect for any crack and broken weld seam by following paragraph 1.c) of Schempp-Hirth Flugzeugbau GmbH Working Instructions Technical Note 396–22, 380–3, 868–24, 890–18, A532–10, Revision 0, dated February 28, 2022 (issued as one document).

(iii) If no indications of cracking are present and you have suitable tools such as a mirror, flashlight, borescope, or equivalent to do the inspection required in paragraph (g)(1)(i) of this AD, inspect the elevator U-bracket for any crack and broken weld seam by following paragraph 1.c) of Schempp-Hirth Flugzeugbau GmbH Working Instructions Technical Note 396–22, 380–3, 868–24, 890–18, A532–10, Revision 0, dated February 28, 2022 (issued as one document). This inspection may be done without removing the elevator U-bracket.

(2) If during any inspection as required by paragraph (g)(1) of this AD, there is any crack

or broken weld seam in the elevator U-bracket, before further flight, replace the elevator U-bracket by following paragraph 1.d) of Schempp-Hirth Flugzeugbau GmbH Working Instructions Technical Note 396–22, 380–3, 868–24, 890–18, A532–10, Revision 0, dated February 28, 2022 (issued as one document).

(3) Before further flight after completing the actions in paragraph (g)(1) and (2) of this AD, as applicable, and thereafter at intervals not to exceed 12 months, rig the horizontal tail on the fin by following paragraph 1.d) of the Schempp-Hirth Flugzeugbau GmbH Working Instructions Technical Note 396–22, 380–3, 868–24, 890–18, A532–10, Revision 0, dated February 28, 2022 (issued as one document).

(4) Before further flight after completing the action in paragraph (g)(3) of this AD, and thereafter at intervals not to exceed 12 months, inspect for softness and play in the rear connection between the horizontal tail and the rear attachment on the fuselage by following paragraph 1.d) of Schempp-Hirth Flugzeugbau GmbH Working Instructions.

Technical Note 396–22, 380–3, 868–24, 890–18, A532–10, Revision 0, dated February 28, 2022 (issued as one document). If there is softness or play, before further flight, do the applicable corrective actions by following paragraph 1.d) of the Schempp-Hirth Flugzeugbau GmbH Working Instructions Technical Note 396–22, 380–3, 868–24, 890–18, A532–10, Revision 0, dated February 28, 2022 (issued as one document). Where the service information specifies contacting Schempp-Hirth Flugzeugbau GmbH for a repair, instead use a method approved by the Manager, International Validation Branch, FAA; EASA; or Schempp-Hirth Flugzeugbau GmbH's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(5) Before further flight after completing the action in paragraph (g)(4) of this AD, and thereafter at intervals not to exceed 12 months, inspect the foam support for compression between the vertical and horizontal tail by following paragraph 1.d) of Schempp-Hirth Flugzeugbau GmbH Working Instructions Technical Note 396–22, 380–3, 868–24, 890–18, A532–10, Revision 0, dated February 28, 2022 (issued as one document). If the foam support has settled to the point that it cannot be further compressed, it must be replaced before further flight.

(h) Special Flight Permits

Special flight permits are prohibited.

(i) Alternative Methods of Compliance (AMOCs)

The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in § 39.19. In accordance with § 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (j)(2) of this AD or email to: *9-AVS-AIR-730-AMOC@faa.gov.* If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Additional Information

(1) Refer to EASA Emergency AD 2022–0242–E, dated December 7, 2022, for related information. This EASA Emergency AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–0162.

(2) For more information about this AD, contact Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; email: *jim.rutherford@faa.gov.*

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (4) of this AD.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Schempp-Hirth Flugzeugbau GmbH Working Instructions Technical Note 396–22, 380–3, 868–24, 890–18, A532–10, Revision 0, dated February 28, 2022 (issued as one document).

Note 1 to paragraph (k)(1)(i): This service information contains German to English translation. EASA used the English translation in referencing the document from Schempp-Hirth Flugzeugbau GmbH. For enforceability purposes, the FAA will refer to the Schempp-Hirth Flugzeugbau GmbH service information in English as it appears on the document.

(ii) [Reserved]

(3) For service information identified in this AD, contact Schempp-Hirth, Krebenstrasse 25, Kirchheim unter Teck, Germany; phone: +49 7021 7298–0; email: *info@schempp-hirth.com;* website: *schempp-hirth.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on February 3, 2023.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–02773 Filed 2–8–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0932; Airspace Docket No. 21–AEA–22]

RIN 2120–AA66

Amendment and Establishment of Area Navigation (RNAV) Routes; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action amends a final rule published by the FAA in the **Federal Register** on December 7, 2022, that, among other actions, amended area navigation (RNAV) route T–224 by removing the AXEJA, AL, computer navigation fix (CNF) from the route description. This action re-inserts AXEJA into the T–224 description as an RNAV waypoint (WP) instead of a CNF. This action is necessary to match the FAA National Airspace System Resource (NASR) database information.

DATES: Effective date 0901 UTC, February 23, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that

section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the NAS.

History

The FAA published a final rule for Docket No. FAA–2022–0932, in the **Federal Register** (87 FR 74962; December 7, 2022) amending, in part, RNAV route T–224 by removing the AXEJA, AL, computer navigation fix (CNF) from the route description. The AXEJA Fix is a CNF. As described in the Aeronautical Information Manual (AIM), a CNF is a point described by a latitude/longitude coordinate that is required to support area navigation (RNAV) system operations. The GPS receiver uses CNFs in conjunction with WPs to navigate from point to point. However, CNFs are not used for air traffic control or communication purposes, and pilots do not use them for filing flight plans or navigating along a route. For that reason, the FAA removed the AXEJA, AL, CNF from the route description.

After publishing the rule, the FAA decided to convert AXEJA from a CNF to an RNAV WP. A WP is most often used in RNAV routes to indicate a change in direction or altitude along the route. With this change, it is appropriate to use AXEJA in the T–224 description. Therefore, this action re-inserts AXEJA into the T–224 description as a WP.

United States RNAV T-routes are published in paragraph 6011 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document will be published subsequently in FAA Order JO 7400.11.

The Rule

This action amends 14 CFR part 71 by including the reference to AXEJA, AL, WP for the reasons explained under the History heading. This action conforms the route description to match the FAA NASR database information and does not make any substantive changes to RNAV route T–224. Therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of re-inserting AXEJA into the T–224 description as an RNAV WP instead of a CNF, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5b, which categorically excludes from further environmental impact review ''Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*) . . .''. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6011 United States Area Navigation Routes

* * * * *

T–224 Palacios, TX (PSX) to Boston, MA (BOS) [Amended]

Palacios, TX (PSX)	VORTAC	(Lat. 28°45′51.93″ N, long. 096°18′22.25″ W)
MOLLR, TX	WP	(Lat. 29°39′20.23″ N, long. 095°16′35.83″ W)
SHWNN, TX	WP	(Lat. 29°56′45.94″ N, long. 094°00′57.73″ W)
WASPY, LA	FIX	(Lat. 30°01′33.88″ N, long. 093°38′50.45″ W)
KNZLY, LA	WP	(Lat. 30°08′29.48″ N, long. 093°06′19.37″ W)
DAFLY, LA	WP	(Lat. 30°11′37.70″ N, long. 091°59′33.94″ W)
KJAAY, LA	WP	(Lat. 30°05′15.06″ N, long. 090°35′19.73″ W)
SLIDD, LA	FIX	(Lat. 30°09′46.08″ N, long. 089°44′02.18″ W)
WTERS, MS	WP	(Lat. 30°24′24.36″ N, long. 089°04′37.04″ W)
LYNRD, AL	WP	(Lat. 30°43′33.26″ N, long. 088°21′34.07″ W)
AXEJA, AL	WP	(Lat. 31°02′32.36″ N, long. 087°57′01.58″ W)
WIILL, AL	WP	(Lat. 31°27′33.96″ N, long. 087°21′08.62″ W)

MGMRY, AL	WP	(Lat. 32°13′20.78″ N, long. 086°19′11.24″ W)
GONDR, AL	WP	(Lat. 32°22′01.98″ N, long. 085°45′57.08″ W)
RSVLT, GA	WP	(Lat. 32°36′55.43″ N, long. 085°01′03.81″ W)
SINCA, GA	FIX	(Lat. 33°04′52.28″ N, long. 083°36′17.52″ W)
UGAAA, GA	WP	(Lat. 33°56′51.32″ N, long. 083°19′28.42″ W)
ECITY, SC	WP	(Lat. 34°25′09.62″ N, long. 082°47′04.58″ W)
STYLZ, NC	WP	(Lat. 35°24′22.83″ N, long. 082°16′07.01″ W)
BONZE, NC	WP	(Lat. 35°52′09.16″ N, long. 081°14′24.10″ W)
MCDON, VA	WP	(Lat. 36°40′29.56″ N, long. 079°00′52.03″ W)
NUTTS, VA	FIX	(Lat. 37°04′34.16″ N, long. 078°12′13.69″ W)
WAVES, VA	WP	(Lat. 37°35′13.54″ N, long. 077°26′52.03″ W)
TAPPA, VA	FIX	(Lat. 37°58′12.66″ N, long. 076°50′40.62″ W)
COLIN, VA	FIX	(Lat. 38°05′59.23″ N, long. 076°39′50.85″ W)
SHLBK, MD	WP	(Lat. 38°20′16.21″ N, long. 076°26′10.51″ W)
PRNCZ, MD	WP	(Lat. 38°37′38.10″ N, long. 076°05′08.20″ W)
Smyrna, DE (ENO)	VORTAC	(Lat. 39°13′53.93″ N, long. 075°30′57.49″ W)
JIIMS, NJ	WP	(Lat. 39°32′15.62″ N, long. 074°58′01.72″ W)
Coyle, NJ (CYN)	VORTAC	(Lat. 39°49′02.42″ N, long. 074°25′53.85″ W)
DIXIE, NJ	FIX	(Lat. 40°05′57.72″ N, long. 074°09′52.17″ W)
Kennedy, NY (JFK)	VOR/DME	(Lat. 40°37′58.40″ N, long. 073°46′17.00″ W)
KEEPM, NY	FIX	(Lat. 40°50′14.77″ N, long. 073°32′42.58″ W)
Calverton, NY (CCC)	VOR/DME	(Lat. 40°55′46.63″ N, long. 072°47′55.89″ W)
YANTC, CT	WP	(Lat. 41°33′22.81″ N, long. 071°59′56.95″ W)
Boston, MA (BOS)	VOR/DME	(Lat. 42°21′26.82″ N, long. 070°59′22.37″ W)

* * * * *

Issued in Washington, DC, on February 6, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–02766 Filed 2–8–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM22–3–000; Order No. 887]

Internal Network Security Monitoring for High and Medium Impact Bulk Electric System Cyber Systems

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final action.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is directing the North American Electric Reliability Corporation (NERC) to develop and submit within 15 months of the effective date of this final action for Commission approval new or modified Reliability Standards that require internal network security monitoring within a trusted Critical Infrastructure Protection networked environment for all high impact bulk electric system (BES) Cyber Systems with and without external routable connectivity and medium impact BES Cyber Systems with external routable connectivity. In addition, the Commission directs NERC to perform a study of all low impact BES Cyber Systems with and without external routable connectivity and medium impact BES Cyber Systems without external routable connectivity, as set forth in the final action, and to submit its study report to the Commission within 12 months of the issuance of this final action.

DATES: This final agency action is effective April 10, 2023.

FOR FURTHER INFORMATION CONTACT: Cesar Tapia (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6559, *cesar.tapia@ferc.gov.*

Leigh Faugust (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6396, *leigh.faugust@ferc.gov*.

Seth Yeazel, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6890, *seth.yeazel@ferc.gov*.

SUPPLEMENTARY INFORMATION:

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I. Introduction

1. Pursuant to section 215(d)(5) of the Federal Power Act (FPA),[1] the Commission directs the North American Electric Reliability Corporation (NERC) to develop new or modified Critical Infrastructure Protection (CIP) Reliability Standards that require internal network security monitoring (INSM) for CIP-networked environments for all high impact bulk electric system (BES) Cyber Systems [2] with and without external routable connectivity and medium impact BES Cyber Systems with external routable connectivity.[3] Further, the Commission directs NERC to submit a report within 12 months of issuance of this final action that studies the feasibility of implementing INSM at all low impact BES Cyber Systems [4] and medium impact BES Cyber Systems without external routable connectivity (*i.e.,* BES Cyber Systems not subject to the new or revised Reliability Standards).[5]

2. INSM is a subset of network security monitoring that is applied within a ''trust zone,'' [6] such as an electronic security perimeter.[7] For the purpose of this rulemaking, the trust zone applicable to INSM is the CIP-networked environment. INSM enables continuing visibility over communications between networked devices within a trust zone and detection of malicious activity that has circumvented perimeter controls. Further, INSM facilitates the detection of anomalous network activity indicative of an attack in progress, thus increasing the probability of early detection and allowing for quicker mitigation and recovery from an attack.

3. We find that, while the CIP Reliability Standards require monitoring of the electronic security perimeter and associated systems for high and medium impact BES Cyber Systems, the CIP-networked environment remains vulnerable to attacks that bypass network perimeter-based security controls traditionally used to identify the early phases of an attack. This presents a gap in the currently effective CIP Reliability Standards. To address this gap, we direct NERC to develop new or modified CIP Reliability Standards requiring INSM for all high impact BES Cyber Systems with and without external routable connectivity and medium impact BES Cyber Systems with external routable connectivity to ensure the detection of anomalous network activity indicative of an attack in progress. These provisions will increase the probability of early detection and allow for quicker mitigation and recovery from an attack.

4. As discussed below, while the Commission's notice of proposed rulemaking (NOPR) [8] in this proceeding proposed to direct NERC to address INSM for all high and medium impact BES Cyber Systems, we are persuaded by commenters that raised certain concerns with the NOPR proposal and, in this final action, limit our directive to all high impact BES Cyber Systems with and without external routable connectivity and medium impact BES Cyber Systems with external routable connectivity.

5. While NERC has flexibility in developing the content of INSM requirements, the new or modified CIP Reliability Standards must address the specific concerns that we identify in this final action. In particular, in this final action, we direct NERC to develop new or modified CIP Reliability Standards that are forward-looking, objective-based, and that address the following three security objectives that pertain to INSM. First, any new or modified CIP Reliability Standards should address the need for responsible entities to develop baselines of their network traffic inside their CIP-networked environment. Second, any new or modified CIP Reliability Standards should address the need for responsible entities to monitor for and detect unauthorized activity, connections, devices, and software inside the CIP-networked environment. And third, any new or modified CIP Reliability Standards should require responsible entities to identify anomalous activity to a high level of confidence by: (1) logging network traffic (we note that packet capture is one means of accomplishing this goal); [9]

[1] 16 U.S.C. 824o(d)(5) (The Commission may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.).

[2] BES Cyber Systems are defined as ''one or more BES Cyber Assets logically grouped by a responsible entity to perform one or more reliability tasks.'' *See* NERC, *Glossary of Terms Used in NERC Reliability Standards* (2022) (NERC Glossary), *https://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf.* BES Cyber Systems are categorized as high, medium, or low impact depending on the functions of the assets housed within each system and the risk they potentially pose to the reliable operation of the Bulk-Power System. Reliability Standard CIP–002–5.1a (BES Cyber System Categorization) sets forth criteria that registered entities apply to categorize BES Cyber Systems as high, medium, or low impact depending on the adverse impact that loss, compromise, or misuse of those BES Cyber Systems could have on the reliable operation of the BES. The impact level (*i.e.,* high, medium, or low) of BES Cyber Systems, in turn, determines the applicability of security controls for BES Cyber Systems that are contained in the remaining CIP Reliability Standards (*i.e.,* Reliability Standards CIP–003–8 to CIP–013–1).

[3] NERC defines external routable connectivity as the ''ability to access a BES Cyber System from a Cyber Asset that is outside of its associated Electronic Security Perimeter via a bi-directional routable protocol connection.'' *See* NERC Glossary.

[4] For ease of reference, low impact BES Cyber Systems include those with and without external routable connectivity.

[5] For ease of reference, BES Cyber Systems not subject to the new or revised Reliability Standards in this final action will be referred to as all low impact BES Cyber Systems and medium impact BES Cyber Systems without external routable connectivity.

[6] The U.S. Department of Homeland Security, Cybersecurity and Infrastructure Security Agency (CISA) defines trust zone as a ''discrete computing environment designated for information processing, storage, and/or transmission that share the rigor or robustness of the applicable security capabilities necessary to protect the traffic transiting in and out of a zone and/or the information within the zone.'' CISA, *Trusted Internet Connections 3.0: Reference Architecture,* at 2 (July 2020), *https://www.cisa.gov/sites/default/files/publications/CISA_TIC%203.0%20Vol.%202%20Reference%20Architecture.pdf.*

[7] An electronic security perimeter is ''the logical border surrounding a network to which BES Cyber Systems are connected using a routable protocol.'' NERC Glossary.

[8] *See Internal Network Sec. Monitoring for High & Medium Impact Bulk Elec. Sys. Cyber Sys.,* Notice of Proposed Rulemaking, 87 FR 4173 (Jan. 27, 2022), 178 FERC ¶ 61,038, at P 31 (2022) (INSM NOPR).

[9] While the NOPR stated that ''any new or modified CIP Reliability Standards should address the ability to support operations and response by

Continued

(2) maintaining logs and other data collected regarding network traffic; and (3) implementing measures to minimize the likelihood of an attacker removing evidence of their tactics, techniques, and procedures [10] from compromised devices.[11]

6. We also direct NERC to submit the new or modified CIP Reliability Standards for Commission approval within 15 months of the effective date of this final action. We believe that a 15-month deadline provides sufficient time for NERC to develop responsive standard(s) within NERC's standards development process.

7. Further, the Commission sought comment in the NOPR on the possible implementation of INSM to detect malicious activity in networks with low impact BES Cyber Systems but did not propose to direct the development of Reliability Standards for INSM for low impact BES Cyber Systems. In this final action, we direct NERC to conduct a study to support future Commission actions to extend INSM requirements to all low impact BES Cyber Systems and medium impact BES Cyber Systems without external routable connectivity. Specifically, NERC should include in its study a determination of: (1) ongoing risk to the reliability and security of the Bulk-Power System posed by low and medium impact BES Cyber Systems that would not be subject to the new or modified Reliability Standards, including the number of low and medium impact BES Cyber Systems not required to comply with the new or modified standard; and (2) potential technological or other challenges involved in extending INSM to additional BES Cyber Systems, as well as possible alternative mitigating actions to address ongoing risks. We believe that this information would provide the basis for further Commission action, as warranted, regarding INSM or alternatives. We direct NERC to file its study report with the Commission within 12 months of the issuance of this final action.

II. Background

A. Section 215 and the Mandatory Reliability Standards

8. FPA section 215 provides that the Commission may certify an Electric Reliability Organization (ERO), the purpose of which is to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.[12] Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[13] Pursuant to FPA section 215, the Commission established a process to select and certify an ERO [14] and subsequently certified NERC.[15]

B. Internal Network Security Monitoring

9. INSM is designed to address as early as possible situations where perimeter network defenses are breached by detecting intrusions and malicious activity within a trust zone. INSM consists of three stages: (1) collection; (2) detection; and (3) analysis. Taken together, these three stages provide the benefit of early detection and alerting of intrusions and malicious activity.[16] Some of the tools that may be used for INSM include: anti-malware; intrusion detection systems; intrusion prevention systems; and firewalls.[17] These tools are multipurpose and can be used for collection, detection, and analysis (*e.g.,* forensics). Additionally, some of the tools (*e.g.,* anti-malware, firewall, or intrusion prevention systems) have the capability to block network traffic.

10. The benefits of INSM can be understood by first describing the way attackers commonly compromise targets. Attackers typically follow a systematic process of planning and execution to increase the likelihood of a successful compromise.[18] This process includes reconnaissance (*e.g.,* information gathering), choice of attack type and method of delivery (*e.g.,* malware delivered through a phishing campaign), taking control of the entity's systems, and carrying out the attack (*e.g.,* exfiltration of project files, administrator credentials, and employee personal identifiable information). Thus, successful cyberattacks require the attacker to: (1) gain access to a target system; and (2) execute commands while in that system.

11. INSM could better position an entity to detect malicious activity that has circumvented perimeter controls and gained access to the target system. Because an attacker that moves among devices internal to a trust zone must use network pathways and required protocols to send malicious communications, INSM will potentially alert an entity of the attack and improve the entity's ability to stop the attack at its early phases.

12. By providing visibility of network traffic that may only traverse internally within a trust zone, INSM can warn entities of an attack in progress. For example, properly placed, configured, and tuned INSM capabilities such as intrusion detection system and intrusion prevention system sensors could detect and/or block malicious activity early and alert an entity of the compromise. INSM can also be used to record network traffic for analysis, providing a baseline that an entity can use to better detect malicious activity. Establishing baseline network traffic allows entities to define what is and is not normal and expected network activity and determine whether observed anomalous activity warrants further investigation.[19] The recorded network traffic can also be retained to facilitate timely recovery and/or perform a thorough post-incident analysis of malicious activity. High quality data from collected network

requiring responsible entities to . . . log and packet capture network traffic,'' *id.* (citation omitted), we clarify in this final action that ''packet capture'' is one example of how to support that goal. Packet capture allows information to be intercepted in real-time and stored for long-term or short-term analysis, thus providing a network defender greater insight into a network. Packet captures provide context to security events, such as intrusion detection system alerts. *See* CISA, *National Cybersecurity Protection System Cloud Interface Reference Architecture, Volume 1, General Guidance,* at 13, 25 (July 24, 2020), *https://www.cisa.gov/sites/default/files/publications/CISA_NCPS_Cloud_Interface_RA_Volume-1.pdf.*

[10] NIST defines tactics, techniques, and procedures as describing the behavior of an actor, where ''Tactics are high-level descriptions of behavior, techniques are detailed descriptions of behavior in the context of a tactic, and procedures are even lower-level, highly detailed descriptions in the context of a technique.'' NIST further explains that ''tactics, techniques, and procedures could describe an actor's tendency to use a specific malware variant, order of operations, attack tool, delivery mechanism (*e.g.,* phishing or watering hole attack), or exploit.'' *See* NIST, *NIST Special Publication 800–150: Guide to Cyber Threat Information Sharing,* at 2 (Oct. 2016), *https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-150.pdf.*

[11] INSM NOPR, 178 FERC ¶ 61,038 at P 31.

[12] 16 U.S.C. 824o(c).

[13] 16 U.S.C. 824o(e).

[14] *Rules Concerning Certification of the Elec. Reliability Org.; & Procs. for the Establishment, Approval, & Enf't of Elec. Reliability Standards,* Order No. 672, 71 FR 8662 (Feb. 17, 2006), 114 FERC ¶ 61,104, *order on reh'g,* Order No. 672–A, 71 FR 19814 (Apr. 18, 2006), 114 FERC ¶ 61,328 (2006).

[15] *N. Am. Elec. Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[16] *See* Chris Sanders & Jason Smith, *Applied Network Security Monitoring,* at 9–10 (Nov. 2013); *see also* ISACA, *Applied Collection Framework: A Risk-Driven Approach to Cybersecurity Monitoring* (Aug. 18, 2020), *https://www.isaca.org/resources/news-and-trends/isaca-now-blog/2020/applied-collection-framework.*

[17] *See* NIST Special Publication 800–83, *Guide to Malware Incident Prevention and Handling for Desktops and Laptops,* at 10–13 (July 2013), *https://nvlpubs.nist.gov/nistpubs/specialpublications/nist.sp.800-83r1.pdf.*

[18] SANS Institute, *Applying Security Awareness to the Cyber Kill Chain* (May 31, 2019), *https://www.sans.org/blog/applying-security-awareness-to-the-cyber-kill-chain/.*

[19] *See* CISA, *Best Practices for Securing Election Systems,* Security Tip (ST19–002) (Aug. 25, 2021), *https://www.cisa.gov/tips/st19-002.*

traffic is important for recovering from cyberattacks as this type of data allows for: (1) determining the timeframe for backup restoration; (2) creating a record of the attack for incident reporting and response; and (3) analyzing the attack itself to inform actions to prevent it from happening again.[20]

13. In summary, INSM better positions an entity to detect an attacker in the early phases of an attack and reduces the likelihood that an attacker can gain a strong foothold, including operational control, on the target system. In addition to early detection and mitigation, INSM may improve incident response by providing higher quality data about the extent of an attack internal to a trust zone. Finally, INSM provides insight into east-west network traffic [21] happening inside the network perimeter, which enables a more comprehensive picture of the extent of an attack compared to data gathered from the network perimeter alone.[22]

C. Notice of Proposed Rulemaking

14. On January 20, 2022, the Commission issued the INSM NOPR proposing to direct NERC to develop new or modified CIP Reliability Standards to require INSM for high and medium impact BES Cyber Systems. In the NOPR, the Commission preliminarily found that the currently effective CIP Reliability Standards do not address INSM, thus leaving a gap in the CIP Reliability Standards.[23] The NOPR explained that including INSM requirements in the CIP Reliability Standards would ensure that responsible entities maintain visibility over communications between networked devices within a trust zone rather than simply monitoring communications at the network perimeter access point(s) (*i.e.,* at the boundary of an electronic security perimeter as required by the current CIP requirements).[24]

15. The NOPR discussed various risks to trusted CIP networks posed by the lack of requirements for INSM in the Standards, which include attackers: (1) escalating privileges; (2) moving inside the CIP-networked environment; and (3) executing unauthorized code.[25] In the context of supply chain risk, the NOPR explained that a malicious update from a known software vendor could be downloaded directly to a server as trusted code, and it would not set-off any alarms until abnormal behavior occurred and was detected.[26] The NOPR explained that, because the CIP-networked environment is a trust zone, a compromised server in the trust zone could be used to install malicious updates directly onto devices that are internal to the CIP-networked environment without detection. Further, in the context of an insider threat, an employee with elevated administrative credentials could identify and collect data, add accounts, delete logs, or even exfiltrate data without being detected. The NOPR also pointed to the SolarWinds attack as an example of how an attacker can bypass all network perimeter-based security controls traditionally used to identify the early phases of an attack.[27] This supply chain attack leveraged a trusted vendor to compromise the networks of public and private organizations.[28]

16. The NOPR sought comments on all aspects of the proposed directive, and it also specifically solicited responses to the following questions: (1) what are the potential challenges to implementing INSM (*e.g.,* cost, availability of specialized resources, and documenting compliance); (2) what capabilities (*e.g.,* software, hardware, staff, and services) are necessary or appropriate for INSM to meet the security objectives; (3) are the three security objectives for INSM described in the NOPR necessary and sufficient and, if not sufficient, what are other pertinent objectives that would support the goal of having responsible entities successfully implement INSM; and (4) what is a reasonable timeframe for developing and implementing Reliability Standards for INSM.[29]

17. While the Commission's proposed directives centered on high and medium impact BES Cyber Systems, the Commission also sought comment on the usefulness and practicality of implementing INSM to detect malicious activity in networks with low impact BES Cyber Systems, as well as potentially identifying a subset of low impact BES Cyber Systems to which INSM requirements could apply.[30] In particular, the Commission sought comment on whether the same risks associated with high and medium impact BES Cyber Systems also apply to low impact BES Cyber Systems.[31] Commensurate with their impact on the Bulk-Power System, low impact BES Cyber Systems have fewer security controls and, unlike high and medium impact BES Cyber Systems, are not subject to monitoring at the network perimeter access point(s).[32]

18. The comment period for the NOPR ended on March 28, 2022, and the Commission received 22 sets of comments, including one late-filed comment.[33] A list of commenters appears in Appendix A.

III. Need for Reform

19. INSM is a component of a comprehensive cybersecurity strategy as it provides an additional layer of defense against intrusions regardless of the attack vector or whether existing security controls failed. With INSM, an entity can maintain visibility over communications between networked devices within a trust zone and detect malicious activity that has circumvented perimeter controls.[34]

[20] Help Net Security, *Three Reasons Why Ransomware Recovery Requires Packet Data* (Aug. 2021), *https://www.helpnetsecurity.com/2021/08/24/ransomware-recovery-packet-data/.*

[21] East-west traffic refers to the communications among BES Cyber Systems and is the specific type of network traffic that remains within the network perimeter. It may refer to communication peer-to-peer industrial automation and control systems devices in a network or to activity between servers or networks inside a data center, rather than the data and applications that traverse networks to the outside world. CISCO, *Networking and Security in Industrial Automation Environments Design Guide,* at 111 (Aug. 2020), *https://www.cisco.com/c/en/us/td/docs/solutions/Verticals/Industrial_Automation/IA_Horizontal/DG/Industrial-AutomationDG.pdf;* The President's National Security Telecommunications Advisory Committee, *Report to the President on Software-Defined Networking,* at E–3 (Aug. 12, 2020), *https://www.cisa.gov/sites/default/files/publications/NSTAC%20SDN%20Report%20%288-12-20%29.pdf.*

[22] CISA, *CISA Analysis: FY2020 Risk and Vulnerability Assessments* (July 2021), *https://www.cisa.gov/sites/default/files/publications/FY20-RVA-Analysis_508C.pdf.*

[23] INSM NOPR, 178 FERC ¶ 61,038 at PP 2, 14, 26.

[24] *Id.* PP 2, 26.

[25] *Id.* P 33.

[26] *Id.* P 17.

[27] *Id.* P 18 (citing FERC, NERC, *SolarWinds and Related Supply Chain Compromise,* at 16 (July 7, 2021), *https://cms.ferc.gov/media/solarwinds-and-related-supply-chain-compromise-0*).

[28] A threat actor gained access to the SolarWinds production environment, ''pushed'' malicious code through legitimate updates to customers and enabled the adversary to gain remote access and network privileges allowing the actor to manipulate identity and authentication mechanisms. *SolarWinds and Related Supply Chain Compromise* at 7.

[29] INSM NOPR, 178 FERC ¶ 61,038 at P 32.

[30] *Id.* PP 4, 33–34.

[31] *Id.* P 33.

[32] *See Version 5 Critical Infrastructure Protection Reliability Standards,* Order No. 791, 78 FR 72756 (Dec. 13, 2013), 145 FERC ¶ 61,160, at P 106 (2013), *order on clarification and reh'g,* Order No. 791–A, 78 FR 24107 (Apr. 24, 2013), 146 FERC ¶ 61,188 (2014) (finding that categorizing assets as high, medium, or low based on their impact on the reliable operation of the Bulk-Power System, with all BES Cyber Systems being categorized as at least low impact, offers more comprehensive protection than prior versions of the standards and declining to require NERC to develop specific controls for low impact facilities).

[33] The late-filed comment raised issues that were outside the scope of this rulemaking. Accordingly, we do not address the comment here.

[34] INSM NOPR, 178 FERC ¶ 61,038 at P 11.

INSM facilitates the detection of anomalous network activity indicative of an attack in progress, thus increasing the probability of early detection and allowing for quicker mitigation and recovery from an attack.[35] Without INSM, an attacker may be able to move among devices internal to a trust zone using network pathways and required protocols to send malicious communications. Further, without INSM, an attacker could exploit legitimate cyber resources to: (1) escalate privileges (*i.e.,* exploit a software vulnerability to gain administrator account privileges); (2) move undetected inside the trust zone of the CIP-networked environment; or (3) execute unauthorized code (*e.g.,* a virus or ransomware).

20. Currently, network security monitoring in the CIP Reliability Standards focuses on network perimeter defense and preventing unauthorized access at the electronic security perimeter. While the CIP Reliability Standards require monitoring of inbound and outbound internet communications at the electronic security perimeter,[36] the currently effective CIP Reliability Standards do not require INSM *within* trusted CIP-networked environments for BES Cyber Systems. This leaves a gap in the CIP Reliability Standards for situations where vendors or individuals with authorized access are considered secure and trustworthy but could still introduce a cybersecurity risk, as well as other attack vectors that can exploit this gap. Additionally, the lack of INSM controls diminishes an essential component of a defense-in-depth strategy and therefore may increase the time it takes an entity to detect an intrusion and the time an attacker has to leverage compromised user accounts and traverse unmonitored network connections.[37]

21. The currently effective CIP Reliability Standards, while offering a broad set of cybersecurity protections, do not require INSM. For example, Reliability Standard CIP–005–6 (Electronic Security Perimeter(s)), Requirement R1.5 addresses monitoring of network traffic for malicious communications at the electronic security perimeter. Under CIP–005–6 Requirement R1.5, the only locations that require network security monitoring are the electronic security perimeter electronic access points for high and medium impact BES Cyber Systems at control centers. Additionally, Reliability Standard CIP–007–6 (System Security Management), Requirement R.4.1.3 addresses security monitoring and requires the entity to detect malicious code for all high and medium impact BES Cyber Systems and their associated electronic access control or monitoring systems, physical access control systems, and protected cyber assets. To comply with Reliability Standard CIP–007–6 R.4.1.3, responsible entities must install security monitoring tools at the device level but are not required to use INSM methods, such as intrusion detection systems.[38]

22. Further, the currently effective CIP Reliability Standards do not require responsible entities to ensure that anomalous activity within the trust zone can be identified with a high level of confidence because the CIP Reliability Standards are focused on perimeter-based security with limited internal security controls. The three INSM security objectives—pertaining to (1) baselining, (2) monitoring and detecting unauthorized activity, and (3) identification of anomalous activity—aim to address this deficiency. As discussed below, new or modified Reliability Standards responsive to this final action must address these three objectives.

23. For the reasons discussed below, in this final action we affirm the preliminary finding in the NOPR that the lack of INSM requirements in the currently effective CIP Reliability Standards constitutes a security gap. Further, we conclude that there is a sufficient basis for a directive to NERC to require INSM in the CIP Reliability Standards for all high impact BES Cyber Systems with and without external routable connectivity and medium impact BES Cyber Systems with external routable connectivity.[39]

IV. Discussion

A. Overview

24. Pursuant to FPA section 215(d)(5), we direct NERC to develop new or modified CIP Reliability Standards that require applicable responsible entities to implement INSM for all high impact BES Cyber Systems with and without external routable connectivity and medium impact BES Cyber Systems with external routable connectivity. Given the importance of timely addressing the identified security gap, we direct that NERC submit responsive new or modified CIP Reliability Standards within 15 months of the effective date of this final action. Based on the comments received in response to the NOPR, we determine that the record in this proceeding supports the development of mandatory requirements for the implementation of INSM for all high impact BES Cyber Systems with and without external routable connectivity and medium impact BES Cyber Systems with external routable connectivity that are within the control of responsible entities that fall within the scope of our authority under FPA section 215.

25. Overall, commenters agree with the benefits of implementing INSM as an additional layer of cybersecurity protection, although commenters differ on the contours of a directive to NERC to address the issue. NERC notes that while there may be challenges, INSM ''would be an appropriate approach'' to address the risks identified in the NOPR.[40]

26. NERC and other commenters support new or modified CIP Reliability Standards that address INSM for high impact BES Cyber Systems as a worthwhile improvement to the cybersecurity posture of the Bulk-Power System.[41] While no entities altogether oppose INSM for high impact BES Cyber Systems, two commenters recommend limiting INSM at high impact BES Cyber Systems to those located in a control center or those systems with external routable connectivity.[42]

27. Support for requiring the implementation of INSM for medium impact BES Cyber Systems varies, with a majority of commenters agreeing that extending INSM to at least some medium impact BES Cyber Systems could address the risks to the security of the Bulk-Power System identified in

[35] *Id.* P 2.

[36] *See* Reliability Standard CIP–005–6 (Electronic Security Perimeter(s)).

[37] INSM NOPR, 178 FERC ¶ 61,038 at P 31; *see also* Nat'l Sec. Agency, *Network Infrastructure Security Guide* (June 2022), *https://media.defense.gov/2022/Jun/15/2003018261/-1/-1/0/CTR_NSA_NETWORK_INFRASTRUCTURE_SECURITY_GUIDE_20220615.PDF.*

[38] Under Reliability Standard CIP–007–6, Requirement R.4.1.3, an entity may choose, but is not required, to use system-generated listing of network log in/log outs, or malicious code, or other types of monitored network traffic only at the perimeter of all medium and high impact BES Cyber Systems (and not within the trust zone, unlike INSM). The related Measures for this provision provide examples of acceptable evidence of compliance, including a paper or system-generated listing of monitored activities for which the BES Cyber System is configured to log and capable of detecting.

[39] INSM architecture generally relies on external routable connectivity to achieve the full, real-time benefits of INSM, such as the capability to transmit collected data from network traffic and devices to a centralized location for further analysis by cybersecurity professionals.

[40] NERC Comments at 3; *see also* EPSA Comments at 3; Idaho Power Comments at 2; ISO/RTO Comments at 3.

[41] *E.g.,* NERC Comments at 8; BPA Comments at 1; Trades Comments at 1.

[42] *See* ITC Comments at 7; Idaho Power Comments at 2.

the NOPR.[43] Several other commenters also recognize that the NOPR's proposed directives regarding INSM are appropriate to address the threats that high and medium impact BES Cyber Systems face, and their potential impact on the reliable and secure operation of the Bulk-Power System.[44] Other commenters, however, either oppose the proposal for medium impact BES Cyber Systems[45] or advocate for delayed or limited inclusion of medium impact BES Cyber Systems within the scope of CIP Reliability Standards.[46]

28. Commenters raise challenges that may arise during development and implementation of CIP Reliability Standards requiring INSM for medium impact BES Cyber Systems that do not have external routable connectivity. These challenges include the large number of such medium impact BES Cyber Systems, which pose staffing and resource constraints for responsible entities and the possibility of supply chain constraints limiting the availability of necessary hardware and software tools to fully implement INSM.[47] As discussed below, we are persuaded by the comments raising challenges and thus modify the NOPR proposal by directing that NERC develop new or modified Reliability Standards requiring implementation of INSM for medium impact BES Cyber Systems with external routable connectivity.

29. Further, we decline at this time to direct NERC to develop new or modified CIP Reliability Standards to require INSM for low impact BES Cyber Systems. NERC and most other commenters note that the risks associated with high and medium impact BES Cyber Systems do not apply to low impact BES Cyber Systems and that the costs associated with implementing INSM for low impact BES Cyber Systems would not result in a corresponding benefit to security.[48]

30. Although we decline to direct NERC to develop new or modified CIP Reliability Standards requiring INSM for medium impact BES Cyber Systems without external routable connectivity and all low impact BES Cyber Systems in this final action, we recognize the importance of bolstering the cybersecurity of these systems. We believe that the current lack of visibility at low impact BES Cyber Systems, as well as medium impact BES Cyber Systems with similar configurations (*i.e.,* serial-connected and other physical non-internet protocol based industrial control system communications), may leave systems vulnerable to cyberattacks that degrade the reliable and secure operation of the Bulk-Power System. However, we also recognize that extending INSM requirements to all low impact BES Cyber Systems would be difficult to implement or audit, given that there is neither a requirement for entities to identify their low impact BES Cyber Systems on an individual basis nor a requirement for entities to identify an electronic security perimeter for their low impact BES Cyber Systems.[49] Therefore, as discussed below, we direct NERC, pursuant to § 39.2(d) of the Commission's regulations,[50] to submit to the Commission a report discussing the results of the study assessing the risks, implementation challenges, and potential solutions for all low impact BES Cyber Systems and medium impact BES Cyber Systems without external routable connectivity, within 12 months of the issuance of this final action.

31. We address below the following issues raised in the NOPR and NOPR comments: (1) the need for INSM Reliability Standards for all high impact BES Cyber Systems with and without external routable connectivity and medium impact BES Cyber Systems with and without external routable connectivity; (2) the extension of INSM to all low impact BES Cyber Systems; (3) security objectives of the new or modified Reliability Standards; and (4) standard development and implementation timelines. Further, we address the need for further study to support future action as warranted to require INSM for medium impact BES Cyber Systems without external routable connectivity and all low impact BES Cyber Systems.

B. INSM for High and Medium Impact BES Cyber Systems

32. In the NOPR, the Commission proposed to direct NERC to develop new or modified CIP Reliability Standards requiring that responsible entities implement INSM for their high and medium impact BES Cyber Systems.[51] The Commission preliminarily found that INSM, as a fundamental element of a zero-trust architecture,[52] should improve the cybersecurity posture of responsible entities with high and medium impact BES Cyber Systems.[53] The NOPR explained that the proposed directive centers on high and medium impact BES Cyber Systems to improve visibility within networks containing BES Cyber Systems whose compromise could have a significant impact on the reliable operation of the Bulk-Power System.[54] The NOPR sought comments on all aspects of the proposed directive to NERC to modify the CIP Reliability Standards to require INSM for high and medium impact BES Cyber Systems.

1. Comments

a. Implementation of INSM for High Impact BES Cyber Systems

33. NERC, BPA, Consumers, Cynalytica, ISO/RTO Council, Juniper Networks, Microsoft, MRO NSRF, NAGF, Nozomi Networks, and Conway support the NOPR's efforts to require INSM for high impact BES Cyber Systems.[55] NERC states its support for INSM as an ''appropriate approach for consideration'' for high impact BES Cyber Systems.[56]

34. BPA recommends that the Commission limit its initial rulemaking to only high impact BES Cyber Systems.[57] BPA recognizes INSM as an important cybersecurity protection but

[43] NERC Comments at 3; Consumers Comments at 1–2; Cynalytica Comments at 1; ISO/RTO Council Comments at 2–3; Juniper Comments at 1–2; Microsoft Comments at 1; MRO NSRF Comments at 1–2; NAGF Comments at 1; Nozomi Networks Comments at 3; OT Coalition Comments at 3; TAPS Comments at 14; Conway Comments at 1.

[44] *E.g.,* EPSA Comments at 3; Idaho Power Comments at 2; ISO/RTO Comments at 3.

[45] BPA Comments at 2.

[46] EPSA Comments at 2; Idaho Power Comments at 2; Indicated Trade Associations Comments at 9.

[47] *E.g.,* BPA Comments at 3; EPSA Comments at 3; Idaho Power Comments at 2.

[48] *E.g.,* NERC Comments at 8; BPA Comments at 4–5; MRO NSRF Comments at 4; NAGF Comments at 4.

[49] Reliability Standard CIP–003–8 (Security Management Controls), Requirement R2, requires that an entity with low impact BES Cyber Systems must implement a cybersecurity plan that includes elements specified in Attachment 1 of CIP–003–8. While entities must implement a plan that includes ''electronic access controls,'' the NERC defined term ''Electronic Security Perimeter'' is not mentioned in Attachment 1.

[50] 18 CFR 39.2(d) (the ERO shall provide the Commission such information as is necessary to implement section 215 of the FPA).

[51] INSM NOPR, 178 FERC ¶ 61,038 at PP 29, 31.

[52] NIST defines zero-trust architecture as ''[a] security model, a set of system design principles, and a coordinated cybersecurity and system management strategy based on an acknowledgement that threats exist both inside and outside traditional network boundaries. The [zero-trust] security model eliminates implicit trust in any one element, component, node, or service and instead requires continuous verification of the operational picture via real-time information from multiple sources to determine access and other system responses.'' NIST, Computer Security Resource Center Glossary, *https://csrc.nist.gov/glossary/term/zero_trust_architecture.*

[53] INSM NOPR, 178 FERC ¶ 61,038 at P 30.

[54] *Id.* P 3.

[55] NERC Comments at 3; Consumers Comments at 1–2; Cynalytica Comments at 1; ISO/RTO Council Comments at 2–3; Juniper Networks Comments at 1–2; Microsoft Comments at 1; MRO NSRF Comments at 1–2; NAGF Comments at 1; Nozomi Networks Comments at 1; Conway Comments at 1.

[56] NERC Comments at 8.

[57] BPA Comments at 1.

recommends phased adoption of INSM and limiting the initial rulemaking to high impact BES Cyber Systems, due to the resources and length of time needed to make such changes to industrial control systems. BPA recommends that the Commission, in a future proceeding, explore whether INSM requirements should apply to remote medium and low impact facilities without external routable connectivity.[58]

35. Indicated Trade Associations and Idaho Power recommend limiting the NOPR's proposal for high impact BES Cyber Systems. Indicated Trade Associations explains that by prioritizing high impact BES Cyber Systems, responsible entities would be able to ''gather operational experience with INSM technologies.'' [59] While Indicated Trade Associations support implementation of INSM for high impact BES Cyber Systems, they also ask the Commission to convene a forum prior to issuing any directive. Idaho Power also tempers its support of the NOPR recommendations, emphasizing that its support of INSM within BES Cyber Systems is limited to those with external routable connectivity—although also noting that the majority of high impact BES cyber systems likely already have external routable connectivity.[60]

36. ITC's comments support limiting INSM to high impact BES Cyber Systems located in control centers because they have larger numbers of more diversely routed systems with greater external connectivity and therefore more access for an attacker to exploit.[61] According to ITC, additional focus on the prevention of electronic security perimeter breaches continues to be the most effective overall approach to improving the cybersecurity of responsible entities. ITC also cautions that implementing INSM as contemplated by the NOPR could cause congestion and potentially slow the reactions of operators, who must observe and respond quickly to system and customer needs.[62]

Instead of INSM, ITC states that it and many other entities already employ hub-and-spoke architecture [63] for their electronic security perimeters to protect the BES Cyber Systems and BES Cyber Assets within them, which it asserts are inconsistent with (and in many cases, duplicative of) the NOPR proposed directives. Further, ITC explains that as its hub-and-spoke architecture uses few connections between BES Cyber Assets and BES Cyber Systems within each electronic security perimeter, monitoring of such ''fixed, small-scale network traffic'' provides little security benefit compared to the costs.[64] ITC recommends that the Commission consider other cybersecurity strategies like application whitelisting [65] for defense-in-depth, which it asserts provide comparable security to INSM.[66]

37. Indicated Trade Associations and NAGF both note that entities may not have the same internal networks or architectures and that some may have implemented network segmentation or micro-segmentation of their networks.[67] NAGF explains that applying a complex and costly INSM infrastructure may disincentivize the use of segmentation.[68]

b. Implementation of INSM for Medium Impact BES Cyber Systems

38. NERC, Consumers, Cynalytica, ISO/RTO Council, Juniper Networks, Microsoft, MRO NSRF, NAGF, Nozomi Networks, and Conway support the NOPR's efforts to require INSM for medium impact BES Cyber Systems.[69]

39. NERC states that it supports the efforts to address the risks identified in the NOPR (such as a bad actor leveraging vendors or others with authorized access to a network to attack these systems) and agrees that INSM is an appropriate approach to address such risks.[70] NERC comments that INSM could benefit the CIP Reliability Standards as a ''consistent means of gaining visibility and awareness'' within an electronic security perimeter.[71] Furthermore, NERC recognizes ''the importance of maturing security controls pertaining to zero-trust principles within Reliability Standards'' and agrees with the NOPR that INSM would advance responsible entities' cybersecurity posture towards zero-trust architecture.[72] Both NERC and Conway explain that INSM ensures that there is monitoring of east-west endpoint to endpoint communications internal to the electronic security perimeter.[73] ISO/RTO Council and MRO NSRF, also supporting the NOPR proposal, state that systems solutions for anomaly detection, such as east-west monitoring, allow for more efficient summarizing of data and identification of anomalies.[74]

40. NAGF supports the NOPR proposal and states that INSM will complement existing network security perimeter monitoring requirements for high and medium impact BES Cyber Systems through improved internal network communications visibility.[75] In support of the NOPR proposal, Consumers notes that it has already independently concluded that INSM warrants investment and has implemented INSM for most of its high and medium impact BES Cyber Systems within an electronic security perimeter.[76]

41. Comments from technology vendors support the NOPR's proposed directives to add INSM to the NERC CIP Reliability Standards. Cynalytica and Microsoft both point to INSM as being crucial to a zero-trust strategy.[77] Cynalytica further opines ''that all BES Cyber Systems should be monitored to ensure the visibility and operational situational awareness that a true zero-trust strategy brings in support of critical infrastructure resiliency.'' [78] Microsoft also supports directing NERC to develop Reliability Standards that require INSM for high and medium

[58] *Id.* at 3.

[59] Indicated Trade Associations Comments at 9.

[60] Idaho Power Comments at 2.

[61] ITC Comments at 2–3.

[62] *Id.* at 2.

[63] ITC explains that hub-and-spoke architecture uses many, relatively small, electronic security perimeters, each containing a small number of BES Cyber Systems and/or Assets that are often in close physical proximity to each other but using few connections between Cyber Assets and Systems within each electronic security perimeter. *Id.* at 4.

[64] *Id.*

[65] Whitelisting, also referred to as allowlisting, allows only selected authorized programs to run, while all other programs are blocked from running by default. It is used to establish a baseline for authorized applications and file locations and prevents any action that departs from that baseline. *See* CISA, *Guidelines for Application Whitelisting,* (2013), *https://www.cisa.gov/uscert/sites/default/files/documents/Guidelines%20for%20Application%20Whitelisting%20in%20Industrial%20Control%20Systems_S508C.pdf.*

[66] ITC Comments at 6.

[67] Indicated Trade Associations Comments at 17; NAGF Comments at 2. Network segmentation is one way of improving security by dividing a larger network into multiple segments, which each act as their own small network.

[68] NAGF Comments at 2.

[69] NERC Comments at 3; Consumers Comments at 1–2; Cynalytica Comments at 1; ISO/RTO Council Comments at 2–3; Juniper Networks Comments at 1–2; Microsoft Comments at 1; MRO NSRF Comments at 1–2; NAGF Comments at 1; Nozomi Networks Comments at 1; Conway Comments at 1.

[70] NERC Comments at 3.

[71] *Id.* at 5.

[72] *Id.* at 6.

[73] NERC Comments at 4–5; Conway Comments at 2.

[74] ISO/RTO Council Comments at 4–5; MRO NSRF Comments at 2.

[75] NAGF Comments at 1.

[76] Consumers Comments at 2.

[77] Cynalytica Comments at 1; Microsoft Comments at 3 (asserting that the Commission's recommendations for implementation of INSM on BES Cyber Systems is a cybersecurity best practice and is consistent with a zero-trust security model and is consistent with the White House zero-trust strategy published in January 2022 (citing White House, *Moving the U.S. Government Toward Zero Trust Cybersecurity Principles* (Jan. 26, 2022), *https://www.whitehouse.gov/wp-content/uploads/2022/01/M-22-09.pdf*)).

[78] Cynalytica Comments at 4.

impact BES Cyber Systems.[79] Nozomi and Juniper Networks also support the proposal, asserting that, given the increasingly sophisticated methods by which attackers gain access to critical systems, it is critical that entities move beyond protection of the electronic security perimeter and implement dynamic, persistent monitoring measures.

42. CDWR, Electricity Canada, the OT Coalition, Reclamation, and TAPs focus their comments on the effectiveness of using INSM to achieve cybersecurity goals rather than explicitly supporting or opposing the NOPR proposal to implement INSM for high and medium impact BES Cyber Systems.[80] For example, CDWR requests that the Commission consider whether directives necessary to provide an adequate level of reliability and security are also cost effective.[81] And Electricity Canada states that it agrees that INSM is an important part of an overall cybersecurity strategy when implemented at appropriate locations in a network.[82]

c. Limiting INSM for Medium Impact BES Cyber Systems Based on External Routable Connectivity

43. Although the NOPR did not distinguish the proposed directive for medium impact BES Cyber Systems by risk, their location at control centers, or the existence of external routable connectivity, commenters raise the possibility of limiting INSM on those bases.

44. EPSA, supporting Indicated Trade Associations' request for the Commission to convene a forum prior to issuing any directive, argues that while high impact BES Cyber Systems are indisputably worthy of INSM measures, any new requirements imposed on medium impact locations should be commensurate with the risk posed by each individual location that could be compromised. Therefore, EPSA asserts that if the Commission does act before convening a forum, that it phase in new requirements based on risk, for example beginning with high impact BES Cyber Systems and only medium impact BES Cyber Systems at control centers. EPSA states that this phased implementation would allow entities to account for challenges while controlling costs and constraints.[83]

45. ITC and Indicated Trade Associations support INSM for medium impact BES Cyber Systems located at control centers. ITC asserts that the Commission could direct NERC to develop a Reliability Standard which requires INSM only for high and medium impact BES Cyber Systems within control centers to achieve a more balanced risk-to-cost outcome. According to ITC, controls centers generally do contain more diversely routed Cyber Systems with greater external connectivity beyond the electronic security perimeter, which provides more access for an attacker to exploit.[84] Further, as ITC explains, control centers' electronic security perimeters already require network monitoring that reduces the difficulty and expense of implementing INSM at these locations.[85] Similarly, while Indicated Trade Associations agree with the Commission that implementation of INSM may improve the security posture of entities owning or operating high impact BES Cyber Systems and ''holds significant potential to increase grid visibility and capability of detecting and mitigating malicious activity,''[86] they propose limiting the implementation to high impact BES Cyber Systems and medium impact BES Cyber Systems located at control centers.[87]

46. Idaho Power states that it agrees with the Commission that implementing INSM at medium impact BES Cyber Systems, in particular those with external routable connectivity, is ''justified and necessary for the threats these systems are facing.''[88] Idaho Power explains that BES Cyber Systems with external routable connectivity provide an additional remote attack vector which is not present in systems without it, and warns that if there is a requirement for INSM for systems that do not currently have external routable connectivity, entities may add external routable connectivity (and therefore an additional attack vector) in order to meet the INSM requirements.[89] Idaho Power recommends that, if the Commission were to require INSM at high and medium impact BES Cyber Systems, the Commission should limit the directive to BES Cyber Systems with external routable connectivity, since external routable connectivity is arguably needed to take full advantage of INSM.[90] Although BPA recommends implementing INSM initially only at high impact BES Cyber Systems, it states that if the Commission orders implementation at medium impact BES Cyber Systems as well, the Commission should limit the implementation to medium impact BES Cyber Systems with external routable connectivity.[91]

47. Commenters point out the following concerns if this final action were to apply to all medium impact BES Cyber Systems, including those without external routable connectivity: (1) lengthy timelines for implementation;[92] (2) lack of external routable connectivity at many medium impact BES Cyber Systems, which is needed to effectively implement INSM;[93] (3) for large entities, the undertaking may be sizable given their wider footprint for monitoring and detecting;[94] (4) already limited personnel would be stretched thin and there may be a shortage of qualified staff;[95] and (5) costs would far exceed any potential cybersecurity benefit.[96]

48. In its comments opposing INSM for medium impact BES Cyber Systems, BPA explains that many medium impact BES Cyber Systems do not have external routable connectivity and that these systems therefore pose minimal risk to intrusion and do not strongly implicate the INSM objectives identified by the Commission.[97] Similar to BPA, Indicated Trade Associations assert that not all medium impact BES Cyber Systems have external routable connectivity and therefore conclude that without this attack surface, there is less to monitor.[98] Furthermore, Indicated Trade Associations argue that medium impact BES Cyber Systems without external routable connectivity do not contain the same risk, or pose the same potential impact, as medium impact BES Cyber Systems with external routable connectivity because an attacker does not have a path to move beyond the local trust zone.[99]

2. Commission Determination

49. Pursuant to FPA section 215(d)(5), we direct NERC to develop new or modified CIP Reliability Standards that require INSM for CIP-networked environments for all high impact BES

[79] Microsoft Comments at 1.

[80] CDWR Comments at 4; Electricity Canada Comments at 2; OT Coalition Comments at 3–4; Reclamation Comments at 3; TAPS Comments at 1.

[81] CDWR Comments at 4.

[82] Electricity Canada Comments at 2.

[83] EPSA Comments at 4.

[84] ITC Comments at 7.

[85] *Id.*

[86] Indicated Trade Associations Comments at 7.

[87] *Id.* at 2.

[88] Idaho Power Comments at 2.

[89] *Id.*

[90] *Id.*

[91] BPA Comments at 3.

[92] *Id.*

[93] *Id.* at 1, 3; Idaho Power Comments at 2.

[94] Indicated Trade Associations Comments at 10 (referring to large entities with multi-state footprints and several hundred physical locations).

[95] *Id.* at 2; EPSA Comments at 4; ITC Comments at 5; TAPS Comments at 4.

[96] ITC Comments at 4; TAPS Comments at 3–5.

[97] BPA Comments at 4.

[98] Indicated Trade Associations Comments at 9.

[99] *Id.* at 9–10.

Cyber Systems with and without external routable connectivity and medium impact BES Cyber Systems with external routable connectivity. We determine that requirements to implement INSM as we direct in this final action will fill a gap in the current suite of CIP Reliability Standards and improve the cybersecurity posture of the Bulk-Power System.[100] Specifically, a requirement for INSM that augments existing perimeter defenses will increase network visibility so that an entity may understand what is occurring in its CIP-networked environment and, thus, improve capability to timely detect potential compromises.[101] INSM also allows for the collection of data and analysis required to implement a defense strategy, improves an entity's incident investigation capabilities, and increases the likelihood that an entity can better protect itself from a future cyberattack and address any security gaps the attacker was able to exploit.

50. Moreover, the NOPR identified certain cyber-related risks that implementation of INSM could mitigate through early detection, such as a supply chain attack leveraging malicious updates from a known software vendor (*i.e.,* SolarWinds attack) and ransomware attacks.[102] NERC and other commenters agree that INSM is an appropriate approach to address such risks.[103]

51. We disagree with ITC's rationale for opposing the NOPR proposal. In particular, we disagree with ITC's assertions that the NOPR proposals are an ''overly aggressive implementation of'' zero-trust architecture.[104] As explained in the NOPR, while INSM is a fundamental element of the zero-trust architecture, it is only one of many aspects.[105] Furthermore, ITC presents its statement that there would only be little monitoring INSM could perform of its fixed, small-scale network traffic, and thus provide ITC little benefit,[106] without further context or explanation. Additionally, we disagree with ITC's assertion that application whitelisting provides comparable security to INSM. Application whitelisting is a security tool implemented at the cyber asset level and does not monitor network traffic, which is the purpose of INSM. Therefore, application whitelisting and INSM are two distinct components of a defense-in-depth strategy and two distinct components of zero-trust architecture.

52. We are also not persuaded by ITC's objections to the NOPR proposal based on ITC's claims regarding the relative limited vulnerability of hub-and-spoke networks. A hub-and-spoke connection is bound on both sides by electronic security perimeters. Like any other BES Cyber Asset, the electronic access points of the hub and spoke configuration are addressed by the currently effective CIP Reliability Standards, but there is currently no required monitoring of network traffic *within* the hub and spoke electronic security perimeters. We disagree with ITC's assertion that hub-and-spoke architecture has lower risk because it uses few connections between Cyber Assets and Cyber Systems within each electronic security perimeter.[107] INSM is a cybersecurity capability that is indifferent to the architecture to which it is applied. INSM is intended to monitor east-west network traffic that does not traverse the access point. An architecture like hub-and-spoke is not a substitute for a cybersecurity capability like INSM.

53. Finally, we disagree with ITC's assertion that the ''NOPR's approach is also inconsistent with the Commission's long-standing risk-based approach to reliability.'' [108] The security objectives proposed in the INSM NOPR are risk-based and objective.[109] Furthermore, malicious actors that compromise BES Cyber Systems within an electronic security perimeter could have the opportunity to perform the same functions as an authorized user, which includes operation of the Bulk-Power System, as demonstrated by the Ukraine attacks referenced in the INSM NOPR.[110]

54. We are not persuaded by BPA's request to limit our directive to INSM for high impact BES Cyber Assets based on resource and timing concerns nor persuaded by ITC's assertion that INSM would lead to congestion. Rather, we believe that our decision to limit our directive at this time to those medium impact BES Cyber Assets with external routable connectivity strikes a proper balance between limited resources and the security benefits of INSM and adequately addresses BPA's concerns and that technical concerns are better addressed during NERC's standards drafting process or during the implementation of INSM. Similarly, NAGF and Indicated Trade Associations' concern that requiring INSM may discourage entities from using greater network segmentation to enhance security is a specific technical concern better raised and addressed during NERC's standards drafting process.

55. We agree with commenters that articulate the various benefits of INSM. NERC and other commenters state that INSM ensures that there is monitoring of east-west endpoint-to-endpoint communications internal to the electronic security perimeter.[111] Likewise, ISO/RTO Council and MRO NSRF explain that systems solutions for anomaly detection, such as east-west monitoring, allow for more efficient summarizing of data and identification of anomalies.[112] Accordingly, the record in this proceeding supports incorporating INSM requirements into the CIP Standards for high and medium impact BES Cyber Systems, as set forth in this final action.

56. We are not persuaded by Indicated Trade Associations' and ITC's suggestions to limit application of INSM to high impact BES Cyber Systems and medium impact BES Cyber Systems located at control centers.[113] Limiting application of INSM to high impact BES Cyber Systems and medium impact BES Cyber Systems located at control centers would constitute too narrow an approach because the trust zone associated with medium impact BES Cyber Systems encompasses systems with a definitive potential to affect Bulk-Power System reliability. We are, however, persuaded by commenters to limit the scope of our directive with regard to medium impact BES Cyber Systems to those with external routable connectivity. Idaho Power argues that the presence of external routable connectivity is an appropriate limiting factor for the directive,[114] and BPA, while it recommends applying the directive only to high impact BES Cyber Systems, states that if the directive encompasses medium impact BES Cyber Systems then it should apply only to medium impact BES Cyber Systems

[100] *See, e.g.,* NERC Comments at 4–5 (current CIP Standards require ''malicious communications monitoring at the Electronic Access Point on the [electronic security perimeter], not necessarily monitoring of activity of those who already have access to the network'').

[101] *Id.* at 5 (''CIP Reliability Standards could benefit from consideration of internal network security monitoring requirements as a consistent means of gaining visibility and awareness within an [electronic security perimeter].'').

[102] INSM NOPR, 178 FERC ¶ 61,038 at PP 17–19.

[103] *E.g.,* NERC Comments at 6; Juniper Comments at 1.

[104] ITC Comments at 2.

[105] INSM NOPR, 178 FERC ¶ 61,038 at P 30.

[106] ITC Comments at 5.

[107] *Id.* at 4.

[108] *Id.*

[109] INSM NOPR, 178 FERC ¶ 61,038 at P 31.

[110] *Id.* P 21.

[111] NERC Comments at 4–5; Conway Comments at 2.

[112] ISO/RTO Council Comments at 4–5; MRO NSRF Comments at 2.

[113] ITC Comments at 7; Indicated Trade Associations Comments at 11.

[114] Idaho Power Comments at 2.

with external routable connectivity.[115] Control centers generally already have external routable connectivity and are thus encompassed by a directive to limit application of INSM for medium impact BES Cyber Systems on the basis of external routable connectivity. For these reasons, we believe that external routable connectivity is a preferable approach to targeting the application of INSM.

57. Although not addressed in the NOPR, multiple commenters raised concerns regarding the efficacy and practicality of requiring implementation of INSM for medium impact BES Cyber Systems that lack external routable connectivity.[116] Simply stated, external routable connectivity allows remote communication with a BES Cyber System through use of a high-speed internet service to send information over a network. Typically, external routable connectivity allows higher quality data to flow from the field devices at substations to a centralized location where cybersecurity professionals can perform further analysis.

58. Commenters explain that a system without external routable connectivity, while not risk-free, is less vulnerable to attack than systems with external routable connectivity.[117] Likewise, according to commenters, external routable connectivity is necessary to achieve the full, real-time benefits of INSM.[118] In consideration of these concerns, we modify the NOPR proposal and direct NERC to develop new or modified CIP Reliability Standards that require INSM for medium impact BES Cyber Systems with external routable connectivity.

59. While we agree with commenters regarding the challenges with implementing INSM for medium impact BES Cyber Systems without external routable connectivity such as costs and stretching thin limited resources,[119] we continue to believe that, if these challenges can be adequately addressed, implementation of INSM for all medium impact BES Cyber Systems would improve the cybersecurity posture of the Bulk-Power System by allowing early detection and response to cyber intrusions in BES Cyber Systems. Although we decline Indicated Trade Associations' request to convene a forum to discuss INSM in the proceeding prior to a directive as the robust comments provide an adequate basis for this final action, we are directing NERC to conduct a study that pertains, *inter alia,* to the challenges of, and solutions for, implementing INSM at medium impact BES Cyber Systems without external routable connectivity and all low impact BES Cyber Systems, as discussed in more detail below.

C. INSM for Low Impact BES Cyber Systems

60. In the NOPR, the Commission stated that its proposal centered on high and medium impact BES Cyber Systems but sought comment on the usefulness and practicality of implementing INSM to detect malicious activity in networks with low impact BES Cyber Systems, including any potential benefits, technical barriers and associated costs.[120] Low impact BES Cyber Systems have fewer security controls and, unlike high and medium impact BES Systems, are not subject to monitoring at the network perimeter access point(s). The Commission particularly sought comment on whether the same risks associated with high and medium impact BES Cyber Systems apply to low impact BES Cyber Systems, including escalating privileges, moving inside the CIP-networked environment, and executing unauthorized code. The Commission further sought comment on the appropriate scope of coverage for INSM for low impact BES Cyber Systems, to the extent such risks exist.

61. The Commission suggested that there may be benefits to having INSM requirements apply to a defined subset of low impact BES Cyber Systems and sought comment on possible criteria or methodology for identifying an appropriate subset of low impact BES Cyber Systems that could benefit from INSM.[121] The Commission further pointed out that there are currently no CIP requirements for low impact BES Cyber Systems for monitoring communications at the electronic security perimeter and therefore asked: (1) whether it makes sense to require INSM while perimeter monitoring is not required; and (2) would it be appropriate to address both perimeter monitoring and INSM for low impact BES Cyber Systems.[122]

1. Comments

62. Technology solutions vendors Cynalytica, Microsoft, Nozomi Networks, and OT Coalition support extending INSM to low impact BES Cyber Systems.[123] Microsoft recommends directing the implementation of INSM for low impact BES Cyber Systems ''to the maximum extent practicable.'' [124] Cynalytica and Microsoft comment that risks within low impact BES Cyber Systems are similar to those within higher impact systems.[125] Cynalytica, Microsoft, and Nozomi Networks all assert that requiring all BES Cyber Systems to implement INSM at this time would reduce cybersecurity risk and exposure.[126] Cynalytica is of the opinion that ''all BES Cyber Systems should be monitored to ensure the visibility and operational situational awareness,'' as low impact BES Cyber Systems ''could be used for operational intelligence gathering, capabilities testing, or could be used to pivot among internal systems.'' [127]

63. Microsoft elaborates that low impact BES Cyber Systems such as distributed energy resources, along with their increasing use, may increase the potential risks associated with low impact BES Cyber Systems.[128] Nozomi Networks recommends extending INSM to low impact BES Cyber Systems as a possible way to both improve their security risks and posture over time, as well as identify potential supply chain security issues.[129]

64. OT Coalition, supporting a phased implementation of INSM for low impact BES Cyber Systems, warns that failure to account for the risk of a low impact BES Cyber System ''being used as a lateral attack vector is inexcusable.'' [130] OT Coalition recommends that INSM-related and perimeter monitoring requirements should be phased in over time, *e.g.,* over the course of five years and moving from larger to smaller entities.

65. Other commenters, however, advocate against requiring INSM at low impact BES Cyber Systems at this time. NERC, BPA, MRO NSRF, and NAGF oppose requiring INSM for low impact BES Cyber Systems as part of this

[115] BPA Comments at 3.

[116] *Id.;* EPSA Comments at 2; Idaho Power Comments at 1; ITC Comments at 7; Indicated Trade Associations Comments at 11.

[117] BPA Comments at 4; Indicated Trade Associations Comments at 9; Idaho Power Comments at 2. Medium impact BES Cyber Systems that lack external routable connectivity remain vulnerable to insider threats and supply chain attacks.

[118] *See, e.g.,* BPA Comments at 2; Idaho Power Comments at 2.

[119] *E.g.,* Indicated Trade Associations Comments at 10.

[120] INSM NOPR, 178 FERC ¶ 61,038 at P 33.

[121] *Id.* P 34.

[122] *Id.*

[123] Cynalytica Comments at 4; Microsoft Comments at 1; Nozomi Networks Comments at 3; OT Coalition Comments at 3–4.

[124] Microsoft Comments at 1.

[125] Cynalytica Comments at 4; Microsoft Comments at 11.

[126] Cynalytica Comments at 4; Microsoft Comments at 1; Nozomi Networks Comments at 3.

[127] Cynalytica Comments at 4.

[128] Microsoft Comments at 11.

[129] Nozomi Networks Comments at 3.

[130] OT Coalition Comments at 4.

proceeding because of the extensive revisions to the CIP Reliability Standards that would be needed and the correspondingly longer time such revisions would take to implement.[131] For example, NERC and MRO NSRF point to the lack of any current requirement for a list of low impact BES Cyber Systems.[132] NERC and MRO NSRF also note that there is no current requirement for low impact BES Cyber Systems to have an electronic security perimeter.[133] Thus, according to MRO NSRF, to properly enact INSM at facilities with low impact BES Cyber Systems would require upgrading all such facilities to one with the same network architecture, protections, and monitoring as that of a facility with high or medium BES Cyber Systems and that the ''cost and effort associated with such an enterprise would not be justified.'' [134]

66. NERC, BPA, CDWR, Consumers, EPSA, Idaho Power, MRO NSRF, NAGF, TAPS, Conway, and Indicated Trade Associations all caution that extending INSM requirements to low impact BES Cyber Systems at this time would be infeasible or impractical from a cost, time, and technical standpoint.[135] Indicated Trade Associations, BPA, EPSA, TAPS, and CDWR explain that the sheer number of low impact BES Cyber Systems, which far exceeds that of medium and high impact BES Cyber Systems, makes implementation of INSM at low impact BES Cyber Systems impractical at this time, from a cost and time commitment perspective.[136] Reclamation notes that low impact BES Cyber Systems pose inherently less risk and therefore may not benefit from INSM as much as medium and high impact BES Cyber Systems.[137] NERC and other commenters explain that procuring the necessary support equipment, such as relays, remote terminal units, and communications processors, would be prohibitively expensive due to issues such as limited bandwidth, remote proximity of the systems, and greater variety of communications protocols.[138] NERC states that expanding INSM requirements to apply to low impact BES Cyber Systems would also pose scalability and manageability issues, such as considering whether communications paths would need to be enhanced to correct any latency or real-time operations impact.[139]

67. NAGF and Consumers assert that requiring INSM implementation for low impact BES Cyber Systems could displace efforts relating to higher impact systems.[140] TAPS comments that there are limited incremental reliability benefits due to low impact BES Cyber Systems being less likely to result in instability, uncontrolled separation, or cascading failure. TAPS further argues that there are technical barriers stemming from the diversity of low impact BES Cyber Systems requiring customized implementation and highly specialized staff.[141]

2. Commission Determination

68. We find comments explaining the challenges of extending INSM requirements to all low impact BES Cyber Systems are persuasive, and we therefore decline to direct NERC to extend requirements for INSM to all low impact BES Cyber Systems at this time. We agree with commenters such as Microsoft, Cynalytica, and Nozomi Networks that the risks within low impact BES Cyber Systems are similar to those within higher impact systems and that implementing INSM at low impact BES Cyber Systems would reduce cybersecurity risk and improve the overall security posture of the Bulk-Power System. Nevertheless, we are persuaded by NERC and other commenters that implementing INSM at all low impact BES Cyber Systems could present certain challenges that makes such a directive at this time impractical. We agree that extending INSM requirements to all low impact BES Cyber Systems could be difficult to scope, implement, or audit, given that there is no requirement for entities to individually identify their low impact BES Cyber Systems or electronic security perimeters for their low impact BES Cyber Systems. Additionally, we accept the explanation of NERC and other commenters that extending INSM to low impact BES Cyber Systems could pose scalability and manageability issues,[142] pose challenges to limited company resources and specialization issues for locations with small support staff,[143] and require more highly specialized staff.[144]

69. Although declining to direct NERC at this time to do so, we believe that in the longer term it may be necessary that INSM be extended to at least some subset of low impact BES Cyber Assets to address the known risks associated with these assets. To address the challenges raised by commenters and support this goal, we direct NERC to study the hurdles and possible solutions of implementing INSM at all low impact BES Cyber Assets, as discussed below.

D. Security Objectives

70. In the NOPR, the Commission proposed that new or modified CIP Reliability Standards requiring INSM for high and medium impact BES Cyber Systems should address three security objectives pertaining to INSM.[145] First, any new or modified CIP Reliability Standards should address the need for each responsible entity to develop a baseline for their network traffic, specifically for security purposes. Second, any new or modified CIP Reliability Standards should address the need for responsible entities to monitor for and detect unauthorized activity, connections, devices, and software inside the CIP-networked environment. Third, any new or modified CIP Reliability Standards should address the ability to support operations and response by requiring responsible entities to ensure that anomalous activity can be identified to a high level of confidence by: (1) logging network traffic at a sufficient level of detail; (2) maintaining logs and other data collected regarding network traffic; and (3) implementing measures to minimize the likelihood of an attacker removing evidence of their tactics, techniques, and procedures.

1. Comments

71. Cynalytica characterizes the security objectives listed in the NOPR as a ''solid foundation'' and recommends that the CIP Reliability Standards adopt the objectives.[146] Microsoft, who strongly advocates for the implementation of the zero-trust security model, asserts that the security objectives from the NOPR align with

[131] NERC Comments at 8; BPA Comments at 4–5; MRO NSRF Comments at 4; NAGF Comments at 4.

[132] NERC Comments at 8–9; MRO NSRF Comments at 4 (''Analysis requires not just a monitoring system but a baseline inventory of BES Cyber Assets to have something to benchmark against.'').

[133] *Id.*

[134] MRO NSRF Comments at 4.

[135] NERC Comments at 8–9; BPA Comments at 4–5; CDWR Comments at 4; Consumers Comments at 2; EPSA Comments at 4–5; Idaho Power Comments at 2–3; MRO NSRF Comments at 4; NAGF Comments at 4; TAPS Comments at 4–9; Conway Comments at 1; Indicated Trade Associations Comments at 28.

[136] BPA Comments at 4; CDWR Comments at 4; EPSA Comments at 4; TAPS Comments at 8; Indicated Trade Associations Comments at 28.

[137] Reclamation Comments at 3.

[138] NERC Comments at 8–9; Idaho Power Comments at 2–3; TAPS Comments at 5–6; Indicated Trade Associations Comments at 28.

[139] NERC Comments at 8–9.

[140] Consumers Comments at 2; NAGF Comments at 4.

[141] TAPS Comments at 3, 5.

[142] NERC Comments at 8–9.

[143] NAGF Comments at 4.

[144] TAPS Comments at 3, 5.

[145] INSM NOPR, 178 FERC ¶ 61,038 at P 31.

[146] Cynalytica Comments at 3.

this model and are critical to maintaining network visibility to drive threat detection and response in real time.[147] NAGF characterizes the security objectives listed in the NOPR as ''acceptable and meaningful'' and asserts that INSM will complement existing network perimeter monitoring requirements.[148]

72. Specific to the security objectives proposed in the NOPR, commenters provide guidance for the development of a baseline of network traffic and suggest there could be alternative approaches. Electricity Canada asserts that there may be other approaches to analyzing network traffic besides baselining and suggests adopting ''simplified language'' that would not exclude the use of a type of technology based on the type of security analysis performed.[149] Electricity Canada recommends that the security objective should be to monitor for and detect unauthorized ''network communication protocols,'' rather than unauthorized ''software.'' [150]

73. Indicated Trade Associations explain that establishing a baseline of legitimate network traffic is challenging and calls for significant judgments unique to the implementation of INSM and that in this context baselining can have many different meanings.[151] According to Indicated Trade Associations, approaches to baselining could include: (1) simply differentiating between alerts and false positives as opposed to actual malicious activity; and (2) an expansive approach of fully mapping every packet between every asset on a network. Indicated Trade Associations states that the expenses and challenges of baselining increase if an expansive definition of baselining is adopted and recommends convening a forum to discuss and agree upon a workable definition.[152]

74. Conway urges that the Commission include in its security objectives language that focuses on desired operational capabilities, which Conway avers would help shape individual analyst roles and response actions and inform system operators and national response to information shared.[153] Conway explains that ''[i]n order for the INSM . . . technologies to be meaningful or useful the sensors and implementation approach must be ICS [industrial control systems] protocol aware and provide detections.'' [154]

75. Beyond the proposed security objectives, multiple commenters generally support an objective, prioritized, flexible, and risk-based approach to the implementation of INSM to BES Cyber Systems. BPA and NAGF advocate for flexibility for the industry to develop risk-based criteria for implementation of INSM to allow entities to focus on their most important assets first and then consider whether other assets should be protected in the same manner.[155] ISO/RTO Council and MRO NSRF emphasize that any new or modified CIP reliability standards should allow registered entities the necessary flexibility to implement the INSM solution most appropriate for their own environments.[156]

76. Commenters suggest other security objectives that the Commission and NERC should prioritize. For example, NAGF suggests an objective of maintaining logs and records of network activities.[157] Microsoft recommends that the Commission include a security objective to ensure that the operator has the staff and procedures in place to drive cybersecurity improvements from its INSM solution.[158] Microsoft explains that effective INSM implementation requires trained staff with the ability to respond to a pre-defined set of alerts with the security operations center or the network operations center. Microsoft further recommends a security objective requiring an intrusion detection system to perform threat vector analysis for assets on the network, to aid security personnel in prioritizing patching targets in its critical systems.[159]

2. Commission Determination

77. We agree with commenters that, as a general matter, the CIP Reliability Standards should be objective-based, technology neutral, and provide flexibility to entities in identifying how to address the three security objectives identified in the NOPR.

78. Regarding comments to include security objectives pertaining to adequate staffing and training, we believe that these goals are necessary to achieve the three objectives stated in the NOPR and need not be set out as separate objectives.[160] As described above, commenters raise a number of thoughts and suggestions pertaining to baselining, packet-level monitoring, logging, and capture of internal network traffic.[161] We expand our second security objective based on Electricity Canada's recommendation to replace software with network communication protocols by adding ''network communication protocols'' to the objective. However, we do not adopt other recommendations, because these matters are better raised during NERC's standards drafting process. We are not persuaded that such level of detail is useful to incorporate within the Commission's final action. Instead, NERC's standards drafting process is the appropriate forum to determine the level of detail necessary to ensure the security objectives are met by any new or modified CIP Reliability Standards.

79. We direct NERC to ensure that the new or modified CIP Reliability Standards that require security controls for INSM for all high impact BES Cyber Systems with and without external routable connectivity and medium impact BES Cyber Systems with external routable connectivity address three security objectives for east-west network traffic. First, any new or modified CIP Reliability Standards should address the need for each responsible entity to develop a baseline for their network traffic by analyzing network traffic and data flows for security purposes. Second, any new or modified CIP Reliability Standards should address the need for responsible entities to monitor for and detect unauthorized activity, connections, devices, network communication protocols, and software inside the CIP-networked environment, as well as encompass awareness of protocols used in industrial control systems.[162] Third, in response to the comments requesting that any new or modified CIP Reliability Standards should be objective-based, we clarify our NOPR proposal so that it is not oriented toward specific technologies or activities, as discussed below.

80. We agree that any new or modified CIP Reliability Standards should provide flexibility to responsible entities in determining the best way to identify anomalous activity to a high level of confidence, so long as those

[147] Microsoft Comments at 2, 4.

[148] NAGF Comments at 1.

[149] Electricity Canada at 2.

[150] *Id.* at 3.

[151] Indicated Trade Associations Comments at 13–14.

[152] *Id.* at 14–15.

[153] Conway Comments at 4.

[154] *Id.* at 2.

[155] BPA Comments at 5; NAGF Comments at 4.

[156] ISO/RTO Council Comments at 4–5; MRO NSRF Comments at 2.

[157] NAGF Comments at 1.

[158] Microsoft Comments at 9–10.

[159] *Id.* at 10.

[160] *Id.* at 9–10.

[161] *See, e.g.,* Electricity Canada Comments at 2; EPSA Comments at 2–6; ISO/RTO Council Comments at 4–5; MRO NSRF Comments at 2; NAGF Comments at 1; Indicated Trade Associations Comments at 18–19.

[162] *E.g.,* Conway Comments at 2; CISA, *Industrial Control Systems Cybersecurity Initiative: Considerations for ICS/OT Monitoring Technologies with an Emphasis on Detection and Information Sharing,* at 2 (2021), *https://www.cisa.gov/sites/default/files/publications/ICS-Monitoring-Technology-Considerations-Final-v2_508c.pdf.*

methods ensure: (1) logging of network traffic (we note that packet capture is one means of accomplishing this goal); (2) maintaining those logs, and other data collected, regarding network traffic that are of sufficient data fidelity to draw meaningful conclusions and support incident investigation; and (3) maintaining the integrity of those logs and other data by implementing measures to minimize the likelihood of an attacker removing evidence of their tactics, techniques, and procedures (maintaining the integrity of logs and other data assures an entity that analysis and findings from incident investigations are representative of the actual incident and can aid in the mitigation of current and future similar compromises).

E. Standards Development Timeframe

81. The Commission in the INSM NOPR requested comments on reasonable timeframes for expeditiously developing and implementing Reliability Standards for INSM given the importance of addressing this reliability gap.[163] The INSM NOPR also inquired as to potential challenges to implementing INSM (*e.g.,* cost, availability of specialized resources, and documenting compliance).

1. Comments

82. Among the few comments on the timeframe for developing new or modified standards addressing INSM, ISO/RTO Council suggests a one-to-two-year timeframe is appropriate.[164] NERC requests that, given the complexity of the subject matter, the Commission defer to NERC regarding the appropriate timeline for standards development to better assure that all relevant issues can receive the proper consideration in the standards development process.[165] Other commenters express caution, and counsel the Commission balance the competing needs of speed and quality in standards development.[166] Others suggest an iterative or staggered approach to standards development.[167]

83. Regarding timeframes for implementation of INSM (*i.e.,* after the proposed INSM standards become effective), commenters recommend timeframes for implementation ranging from two to ten years, depending on whether INSM is to be extended to high impact, medium impact, or low impact BES Cyber Systems. Microsoft suggests a minimum of two years for applicable registered entities to come into compliance with a new INSM reliability standard based on typically budget cycles. Microsoft also points out that entities would need to change their networks to include INSM during a shutdown period, which occurs every 12 to 18 months.[168]

84. MRO NSRF and BPA aver that full implementation of INSM for high and medium impact BES Cyber Systems would require a minimum of three to five years, and MRO NSRF suggests a staggered implementation timeline.[169] MRO NSRF cites several challenges that could affect the implementation timeline, including: (1) supply chain constraints if multiple entities are trying to obtain INSM tools in the same timeframe; (2) shortages of qualified staff; and (3) higher cost due to additional requirements, system configurations, and sudden increase in demand.[170] MRO NSRF did not provide specific cost estimates.

85. Indicated Trade Associations do not provide a specific period but mention that implementing INSM for large entities would require a sizable undertaking, because doing so would entail installing new or upgraded network equipment, increasing network connectivity, and installing multiple INSM monitoring devices requiring aggregation to provide complete operating pictures or baselines.[171]

2. Commission Determination

86. We direct NERC to submit responsive new or modified CIP Reliability Standards within 15 months of the effective date of this final action. We believe that a 15-month deadline would provide sufficient time for NERC to develop responsive new or modified Standards within NERC's standards development process. This deadline is within the range of ISO/RTO Council's suggested one-to-two-year timeframe. Regarding NERC's request that the Commission not set a deadline, we believe that most of the complexities cited by NERC are resolved by our decision not to extend INSM in this final action to low impact BES Cyber Systems and medium impact BES Cyber Systems without external routable connectivity.

87. We decline to direct a specific implementation timeframe for any new or modified standards. Commenters provide a wide range of potential implementation timeframes and raise concerns regarding resource availability and the need for flexibility in implementing new or modified INSM Reliability Standards. Rather than setting the implementation timeframe at this time, we believe NERC should propose an implementation period by balancing the various concerns raised by commenters as well as the need to timely address the identified gap in the CIP Standards pertaining to INSM. When submitting the proposed CIP Standards, NERC should provide its rationale for the chosen implementation timeframe.

F. NERC Study and Report on INSM Implementation

88. While determining above that it is premature to require INSM for medium impact BES Cyber Systems without external routable connectivity and all low impact BES Cyber Systems, we recognize the importance of bolstering the cybersecurity of those systems. We believe that extending INSM to all medium impact BES Cyber Systems and at least a subset of low impact BES Cyber Systems in the future could be necessary to protect the security and the reliability of the Bulk-Power System. To provide a basis for such action, we direct NERC, pursuant to § 39.2(d) of the Commission's regulations,[172] to conduct a study to guide the implementation of INSM, or other mitigation strategies, for medium impact BES Cyber Systems without external routable connectivity and all low impact BES Cyber Systems. The study shall focus on two main topics: (1) risk and (2) challenges and solutions.

89. First, regarding risk, NERC should collect from registered entities information on the number of low impact and medium impact BES Cyber Systems that would not be subject to the new or revised Reliability Standards, which would inform the scope of the risk from systems without INSM. Next, NERC should provide an analysis regarding the substantive risks posed by these BES Cyber Systems operating without the implementation of INSM. Specifically, NERC should determine the quantity of: (1) substation and generation locations that contain medium impact BES Cyber Systems without external routable connectivity; (2) low impact locations (including a breakdown by substations, generations resources, and control centers) that contain low impact BES Cyber Systems without external routable connectivity; and (3) low impact locations that contain low impact BES Cyber Systems

[163] INSM NOPR, 178 FERC ¶ 61,038 at P 32.

[164] ISO/RTO Council Comments at 3–6.

[165] NERC Comments at 3, 6–7.

[166] Reclamation Comments at 2; Cynalytica Comments at 3.

[167] NAGF Comments at 4; Conway Comments at 4.

[168] Microsoft Comments at 10.

[169] MRO NSRF Comments at 3; BPA Comments at 3.

[170] MRO NSRF Comments at 1–2.

[171] Indicated Trade Associations Comments at 10.

[172] 18 CFR 39.2(d).

with external routable connectivity (including a breakdown by substations, generations resources, and control centers). NERC should then discuss the risks to the security of the Bulk-Power System due to the lack of an INSM requirement for the identified facilities.

90. Second, regarding challenges and solutions, NERC should identify the potential technological, logistical, or other challenges involved in extending INSM to additional BES Cyber Systems, as well as possible alternative actions to mitigate the risk posed. For example, as discussed in more detail above, challenges raised by commenters include: (1) lengthy timelines for identifying the location of low impact BES Cyber Systems; (2) the need to add external routable connectivity at many medium impact BES Cyber Systems to effectively implement INSM; (3) a wider footprint for monitoring and detecting for larger entities; (4) shortages of qualified staff; and (5) supply chain constraints.

91. NERC should consult with Commission staff to ensure that the study adequately addresses the topics discussed above. We direct NERC to submit the study report to the Commission within 12 months of the issuance of this final action.

V. Information Collection Statement

92. The information collection requirements contained in this order are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995. OMB's regulations require approval of certain information collection requirements imposed by agency rules. Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rulemaking will not be penalized for failing to respond to this collection of information unless the collection of information displays a valid OMB control number. Comments are solicited on the Commission's need for the information proposed to be reported, whether the information will have practical utility, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

93. The reporting requirements (and associated burden) proposed by the NOPR in Docket No. RM22–3–000 are already covered by the OMB-approved FERC–725. However, we are seeking clearance for this collection of information under FERC–725(1B), which is a temporary placeholder number. FERC–725(1B) is being used because FERC–725 (OMB Control Number 1902–0225) is pending review at OMB for another collection of information, and only one item per OMB control number can be pending review at a time. Otherwise, the collection of information for this final action would be submitted to OMB under FERC–725, as discussed in the NOPR, since the reporting requirements and associated burdens in this final action are already covered by FERC–725.

94. This final action requires that entities that are in the NERC Compliance Registry have an obligation to respond to the Commission directed NERC study, and thus there is a burden to be included in FERC–725(1B) information collection requirements.

95. The NERC Compliance Registry, as of October 3, 2022, identifies approximately 1,682 utilities, both public and non-public, in the U.S. that may respond to the NERC study. For the following reasons, we are using placeholders of one respondent, one response, and one burden hour for FERC–725(1B) in order to submit this request to OMB for PRA review.

(1) We anticipate that the collection of information in this final action will become part of FERC–725 when that collection becomes available for revision.

(2) FERC–725 already includes burdens associated with the ERO's responsibility for Reliability Standards Development

(3) In order to submit the collection of information in this final action, we must submit it through the ROCIS system, which requires figures for respondents, responses, and burdens.

96. To approximate NERC's cost for the temporary, placeholder FERC–725(1B), we are using the estimated average of $91/hour (for wages and benefits) for 2022 for a Commission employee. Therefore, the estimated annual cost of the one placeholder burden hour is $91.

VI. Environmental Analysis

97. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[173] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[174] The actions directed herein fall within this categorical exclusion in the Commission's regulations.

VII. Regulatory Flexibility Act

98. The Regulatory Flexibility Act of 1980 (RFA)[175] generally requires a description and analysis of final action that will have significant economic impact on a substantial number of small entities.

99. By only proposing to direct NERC, the Commission-certified ERO, to develop modified Reliability Standards for INSM at BES Cyber Systems, this final action will not have a significant or substantial impact on entities other than NERC.[176] Therefore, the Commission certifies that this final action will not have a significant economic impact on a substantial number of small entities.

100. Any Reliability Standards proposed by NERC in compliance with this rulemaking will be considered by the Commission in future proceedings. As part of any future proceedings, the Commission will make determinations pertaining to the Regulatory Flexibility Act based on the content of the Reliability Standards proposed by NERC.

VIII. Document Availability

101. 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 (*https://www.ferc.gov*).

102. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

103. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the

[173] *Reguls. Implementing the Nat'l Env't. Pol'cy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[174] 18 CFR 380.4(a)(2)(ii).

[175] 5 U.S.C. 601–612.

[176] *See, e.g., Cyber Sec. Incident Reporting Reliability Standards,* Order No. 848, 83 FR 36727 (July 31, 2018), 164 FERC ¶ 61,033, at P 103 (2018).

Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

IX. Effective Date and Congressional Notification

104. This final action is effective April 10, 2023. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this action is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the Commission.

Issued: January 19, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

Appendix A—Commenters

Abbreviation	Commenter
BPA	Bonneville Power Administration.
CDWR	California Department of Water Resources State Water Project.
Consumers	Consumers Energy Company.
Conway	Tim Conway.
Cynalytica	Cynalytica, Inc.
Electricity Canada	Electricity Canada.
Entergy	Entergy.
EPSA	Electric Power Supply Association.
Idaho Power	Idaho Power Company.
Indicated Trade Associations	Edison Electric Institute, the American Public Power Association, the Large Public Power Council, the National Rural Electric Cooperative Association, and the Electric Power Supply Association.
ISO/RTO Council	ISO/RTO Council.
ITC	International Transmission Company.
Juniper Networks	Juniper Networks.
Microsoft	Microsoft Corporation.
MRO NSRF	Midwest Reliability Organization NERC Standards Review Forum.
NAGF	North American Generator Forum.
NERC	North American Electric Reliability Corporation, Midwest Reliability Organization, Northeast Power Coordinating Council, Inc., ReliabilityFirst Corporation, SERC Reliability Corporation, Texas Reliability Entity, Inc., and Western Electricity Coordinating Council.
Nozomi Networks	Nozomi Networks.
OT Coalition	Operational Technology Cybersecurity Coalition.
Reclamation	United States Bureau of Reclamation.
TAPS	Transmission Access Policy Study Group.

[FR Doc. 2023–01453 Filed 2–8–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0072]

Security Zone; Lower Mississippi River, Mile Marker 94 to 97 Above Head of Passes, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a security zone for all navigable waters within 400 yards of the Left Descending Bank (LDB) of the Lower Mississippi River (LMR) Mile Marker (MM) 94.4 to MM 95.1, Above Head of Passes (AHP), New Orleans, LA. This security zone is necessary to provide security and protection for visiting personnel during the events related to the Mardi Gras celebration. No person or vessel may enter this security zone unless authorized by the Captain of the Port New Orleans (COTP) or a designated representative.

DATES: The regulations in 33 CFR 165.846 will be enforced from noon on February 17, 2023 until 11:59 p.m. on February 21, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant Commander William A. Stewart, Sector New Orleans, U.S. Coast Guard; telephone 504–365–2246, email *William.A.Stewart@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a security zone in 33 CFR 165.846 for events related to Mardi Gras Celebration from noon on February 17, 2023 until 11:59 p.m. on February 21, 2023. This action is being taken to provide security and protection for visiting personnel during the events related to the Mardi Gras celebration. The security zone will cover all navigable waters within 400 yards of the Left Descending Bank on the Lower Mississippi River from MM 94.4 to MM 95.1 AHP, New Orleans, LA. No person or vessel may enter this security zone unless authorized by the Captain of the Port New Orleans (COTP) or a designated representative. A designated representative means any Coast Guard commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of Sector New Orleans; to include a Federal, State, and/or local officer designated by or assisting the COTP in the enforcement of the security zone. To seek permission to enter, contact the COTP or a designated representative by telephone at (504) 365–2545 or VHF–FM Channel 16 or 67. Those in the security zone must transit at their slowest speed and comply with all lawful orders or directions given to them by the COTP or a designated representative.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard will inform the public of the enforcement period of this security zone through Broadcast Notices to Mariners (BNMs) and Marine Safety Information Bulletin (MSIB).

Dated: February 3, 2023.

K.K. Denning,

Captain, U.S. Coast Guard, Captain of the Port Sector New Orleans.

[FR Doc. 2023–02799 Filed 2–8–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0008]

RIN 1625–AA00

Safety Zone; Ocean Rainforest Aquaculture, Santa Barbara, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The U.S. Coast Guard is establishing a temporary safety zone for the navigable waters approximately 5 miles offshore of Santa Barbara, California. This safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by ongoing aquaculture gear deployment and installation. Entry of persons or vessels into this safety zone is prohibited unless specifically authorized by the Captain of the Port Sector Los Angeles—Long Beach (COTP), or their designated representative.

DATES: This rule is effective without actual notice from February 9, 2023 until February 16, 2023. For the purposes of enforcement, actual notice will be used from February 2, 2023, until February 9, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG-2023-0008 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LCDR Maria Wiener, Waterways Management, U.S. Coast Guard Sector Los Angeles—Long Beach; telephone (310) 357–1603, email *D11-SMB-SectorLALB-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive order
FR Federal Register
LLNR Light List Number
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

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 a notice of proposed rulemaking (NPRM) because it is impracticable. The exact timeline and timeframe for the aquaculture gear installation was not determined until late January and immediate action is needed to protect the public from safety hazards associated with the aquaculture gear deployment and installation. It is impracticable to publish an NPRM because we must establish this safety zone by February 2, 2023, and lack sufficient time to publish a rule, collect public comments, and to address them before the event date.

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 contrary to the public interest because immediate action is needed to ensure the safety of persons, vessels, and the marine environment in the vicinity of Santa Barbara during aquaculture gear installation and deployment.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Los Angeles—Long Beach (COTP) has determined that potential hazards associated with the aquaculture gear deployment and installation will be a safety concern for anyone within 34°20′13.28″, 119°42′49.84″ W; thence to 34°20′14.60″ N, 119°42′3.71″ W; thence to 34°19′56.48″ N, 119°42′4.01″ W; thence to 34°19′55.20″ N, 119°42′50.24″ W; thence to the beginning. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while aquaculture deployment and installation is occurring.

IV. Discussion of the Rule

This rule establishes a safety zone from February 2, 2023, through February 16, 2023. The safety zone will cover all navigable waters from the surface to the sea floor in and around Santa Barbara, CA, starting from: 34°20′13.28″, 119°42′49.84″ W; thence to 34°20′14.60″ N, 119°42′3.71″ W; thence to 34°19′56.48″ N, 119°42′4.01″ W; thence to 34°19′55.20″ N, 119°42′50.24″ W; thence to the beginning. These coordinates are based on North American Datum of 1983. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or his designated representative. Sector Los Angeles—Long Beach may be contacted on VHF–FM Channel 16 or (310) 521–3801. The marine public will be notified of the safety zone via Broadcast Notice to Mariners.

A designated representative means a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel designated by or assisting the COTP in the enforcement of the safety zone.

If the COTP determines that the zone need not be enforced during this entire period, the Coast Guard will announce via Broadcast Notice to Mariners when the zone will no longer be subject to enforcement.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, 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 time-of-year of the safety zone. This rule impacts an area of 16-acres for 14 days during the month of February 2023. Vessel traffic will be able to safely transit around this safety zone, which will impact a small, designated area of Santa Barbara, CA.

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.

While some owners or operators of vessels intending to 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 proposed rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and 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 encompassing an area of 16-acres for 14 days during the aquaculture gear installation and deployment. It is categorically excluded from further review under paragraph L60, in Appendix A, Table 1 of DHS Instruction Manual 023–001–01, Rev. 1. Due to urgency, a record of environmental consideration is not required, but will be provided if necessary.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact 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, 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.T11–121 to read as follows:

§ 165.T11–121 Safety Zone; Ocean Rainforest Aquaculture, Santa Barbara, CA.

(a) *Location.* The following area is a safety zone: all navigable waters from the surface to the sea floor in and around Santa Barbara, CA, starting from: 34°20′13.28″, 119°42′49.84″ W; thence to 34°20′14.60″ N, 119°42′3.71″ W; thence to 34°19′56.48″ N, 119°42′4.01″ W; thence to 34°19′55.20″ N, 119°42′50.24″ W; thence to the beginning. These coordinates are based on North American Datum of 1983.

(b) *Definitions.* As used in this section, a designated representative means a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel designated by or assisting the Captain of the Port Sector Los Angeles—Long Beach (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 the COTP or the COTP's representative by hailing Coast Guard Sector Los Angeles—Long Beach on VHF–FM Channel 16 or calling at (310) 521–3801. 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 period.* This section will be enforced from February 2, 2023, through February 16, 2023. If the COTP determines that the zone need not be enforced during this entire period, the Coast Guard will announce via Broadcast Notice to Mariners when the zone will no longer be subject to enforcement.

Dated: February 2, 2023.

R.D. Manning,

Captain, U.S. Coast Guard, Captain of the Port Sector Los Angeles—Long Beach.

[FR Doc. 2023–02744 Filed 2–8–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0026]

Safety Zone; Riverwalk Marketplace/ Lundi Gras Fireworks Display, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a temporary safety zone for the Riverwalk Marketplace/Lundi Gras fireworks display on February 20, 2023, to provide for the safety of life on navigable waterways during this event. Our regulation for annual fireworks displays and other events in the Eighth Coast Guard District requiring safety zones identifies the regulated area for this event on the navigable waters of the Lower Mississippi River between Mile Marker (MM) 93 and MM 96, New Orleans, LA. During the enforcement period, entry into this zone is prohibited unless authorized by the Captain of the Port or a designated representative. All persons and vessels shall comply with the instructions of the Captain of the Port or designated representative. Designated representatives include commissioned, warrant, and petty officers of the U.S. Coast Guard.

DATES: The regulation in 33 Code of Federal Regulations, Part 165.801, Table 5, line 1 will be enforced from 6 p.m. through 7 p.m. on February 20, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Commander William Stewart, Sector New Orleans, U.S. Coast Guard; telephone 504–365–2246, email *William.A.Stewart@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a temporary safety zone in 33 CFR 165.801, Table 5, line 1, for the Riverwalk Marketplace/Lundi Gras fireworks display event from 6 p.m. through 7 p.m. on February 20, 2023. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for annual fireworks displays and other events in the Eighth Coast Guard District requiring safety zones, § 165.801, identifies the regulated area for the Riverwalk Marketplace/ Lundi Gras fireworks display on the navigable waters of the Lower Mississippi River between Mile Marker (MM) 93 and MM 96, New Orleans, LA. During the enforcement period, as reflected in § 165.801(a)–(c), entry into this zone is prohibited unless authorized by the Captain of the Port or a designated representative. All persons and vessels shall comply with the instructions of the Captain of the Port or designated representative. Designated representatives include commissioned, warrant, and petty officers of the U.S. Coast Guard.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via Marine Safety Information Bulletin and Broadcast Notice to Mariners.

Dated: February 3, 2023.

K.K. Denning,

Captain, U.S. Coast Guard, Captain of the Port Sector New Orleans.

[FR Doc. 2023–02807 Filed 2–8–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2022–0169; FRL–9610–02–R2]

Approval and Promulgation of Implementation Plans; New York; Gasoline Dispensing, Stage I, Stage II and Transport Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) submitted by the State of New York for ozone concerning the control of volatile organic compounds. The SIP revision consists of amendments to regulations in New York's Codes, Rules and Regulations (NYCRR) applicable to gasoline dispensing sites and transport vehicles. This revision includes regulatory amendments that eliminate Stage II requirements and strengthen requirements for Stage I vapor recovery systems at gasoline dispensing facilities, and that require that transport vehicles meet current Federal United States Department of Transportation (DOT) requirements. The intended effect of this action is to approve control strategies, required by the Clean Air Act, which will result in emission reductions that will help attain and maintain national ambient air quality standards for ozone and will reduce volatile organic compounds throughout the State. This action is being taken pursuant to the Clean Air Act. The EPA proposed to approve this rule on November 1, 2022, and received no comments.

DATES: This final rule is effective on March 13, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2022–0169. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ysabel Banon, Air Programs Branch, Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866, at (212) 637–3382, or by email at *banon.ysabel@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background
II. Comments Received in Response to the EPA's Proposed Action
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V. Statutory and Executive Order Reviews

I. Background

On November 1, 2022 (87 FR 65714), the EPA published a notice of proposed rulemaking (NPR) that proposed to approve a SIP revision submitted by the State of New York on March 3, 2021. The submitted SIP revision consists of amendments to Title 6 of NYCRR, part 230, ''Gasoline Dispensing Sites and Transport Vehicles.'' These revisions to 6 NYCRR part 230 eliminate Stage II vapor recovery system requirements and require the decommissioning of existing Stage II vapor recovery systems; strengthen Stage I vapor recovery requirements; and require that transport vehicles meet current Federal United States DOT requirements. On September 17, 2021, the New York State Department of Environmental Conservation (NYSDEC) submitted a supplemental analysis, ''New York State Stage II Removal Analysis 2020,'' to demonstrate its justification of Stage II removal.

Stage I Vapor Recovery Systems

Stage I vapor recovery systems are systems that capture hydrocarbon

vapors, such as volatile organic compounds (VOCs), displaced from storage tanks at gasoline dispensing facilities (GDFs) during gasoline tank truck deliveries. When gasoline is delivered into an aboveground or underground storage tank, vapors that were taking up space in the storage tank are displaced by the gasoline entering the storage tank. The Stage I vapor recovery systems route these displaced vapors into the transport vehicle's (delivery truck's) tank. Some vapors are vented to the atmosphere when the storage tank exceeds a specified pressure threshold, however, the Stage I vapor recovery systems greatly reduce the displaced vapors being released into the atmosphere. Stage I vapor recovery systems have been in place since the 1970s, and the EPA guidance regarding use of Stage I systems to control VOC emissions from this source category (gasoline service stations) has been in place since 1975.[1]

Stage II Vapor Recovery Systems and Onboard Refueling Vapor Recovery Systems

Stage II vapor recovery systems and onboard refueling vapor recovery (ORVR) systems are two types of emission control systems that capture fuel vapors from vehicle gas tanks during refueling. Stage II vapor recovery systems are installed at gasoline dispensing facilities and capture the refueling fuel vapors at the gasoline pump. The Stage II system carries the captured vapors back to an underground storage tank at the GDF to prevent the vapors from escaping to the atmosphere. ORVR systems are carbon canisters installed directly on automobiles to capture the fuel vapors evacuated from the gasoline tank before they reach the nozzle. The fuel vapors captured in the carbon canisters are then combusted in the engine when the automobile is in operation. Stage II vapor recovery programs have become largely redundant control systems and Stage II vapor recovery systems achieve an ever-declining emissions benefit as more ORVR-equipped vehicles continue to enter the on-road motor vehicle fleet.[2]

A detailed discussion of New York's SIP revision and EPA's rationale for approval of the SIP revision were provided in the notice of proposed rulemaking and will not be restated in this final rule. For this detailed information, the reader is referred to the EPA's November 1, 2022, proposed rulemaking (87 FR 65714).

Attendant revisions to 6 NYCRR section 200, ''General Provisions,'' section 200.9, Table 1, ''Referenced material'', related to 6 NYCRR part 230 have been addressed under a separate rulemaking at 87 FR 52337, effective September 26, 2022.

II. Comments Received in Response to the EPA's Proposed Action

The EPA provided a 30-day review and comment period for the November 1, 2022, proposed rule. The comment period ended on December 2, 2022. We received no comments on the EPA's proposed action.

III. Final Action

The EPA is approving New York's March 3, 2021, SIP revision that incorporates revisions to Title 6 NYCRR, part 230, ''Gasoline Dispensing Sites and Transport Vehicles,'' with a State effective date of February 12, 2021. The EPA is approving this SIP revision because it meets all applicable requirements of the Clean Air Act and EPA guidance, and it will not interfere with attainment or maintenance of the ozone National Ambient Air Quality Standards. Attendant revisions to 6 NYCRR part 200, ''General Provisions,'' section 200.9, Table 1, ''Referenced material,'' related to 6 NYCRR part 230 have been addressed under a separate rulemaking at 87 FR 52337, effective September 26, 2022.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the revised 6 NYCRR part 230, ''Gasoline Dispensing Sites and Transport Vehicles,'' regulation described in 40 CFR part 52 as discussed in section I. of this preamble. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[3]

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

[1] *See* U.S. EPA, ''Design Criteria for Stage I Vapor Control Systems—Gasoline Service Stations'' (Nov. 1975, EPA Online Publication EPA–450/R–75–102), *available at https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=20013S56.txt;* U.S. EPA, ''Control Techniques Guidelines for the Oil and Natural Gas Industry'' (Nov. 2016 EPA Online Publication EPA–453/B–16–001), *available at https://www.epa.gov/sites/default/files/2016-10/documents/2016-ctg-oil-and-gas.pdf* (providing control techniques guidelines for control of VOC emissions from the gasoline service station source category); and U.S. EPA, ''Control of Volatile Organic Compound Leaks from Gasoline Tank Trunks and Vapor Collection System'' (Dec. 1978 EPA Online Publication EPA–450/2–78–051), *available at https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=2000M9RD.txt* (providing guidelines related to the control of VOC leaks from and test procedures for gasoline tank trunks and vapor collection systems at terminals, bulk plants and service stations).

[2] In areas where certain types of vacuum-assist Stage II vapor recovery systems are used, the differences in operational design characteristics between ORVR and some configurations of these Stage II vapor recovery systems actually result in lower overall control system efficiency than what could have been achieved individually by either ORVR or the Stage II vapor recovery system.

[3] 62 FR 27968 (May 22, 1997).

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and it will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 10, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Lisa Garcia,

Regional Administrator, Region 2.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart HH—New York

■ 2. In § 52.1670, in the table in paragraph (c), revise the entry for ''Title 6, Part 230'' to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS

State citation	Title/subject	State effective date	EPA approval date	Comments
*	*	*	*	*
Title 6, Part 230	Gasoline Dispensing Sites and Transport Vehicles.	2/12/2021	2/9/2023	EPA approval finalized at [insert **Federal Register** citation].
*	*	*	*	*

* * * * *

[FR Doc. 2023–02674 Filed 2–8–23; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 88, No. 27
Thursday, February 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.

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Parts 184 and 200

Guidance for Grants and Agreements

AGENCY: Office of Federal Financial Management, Office of Management and Budget.

ACTION: Proposed rule; notification of proposed guidance.

SUMMARY: The Office of Management and Budget (OMB) is proposing to revise OMB Guidance for Grants and Agreements. The proposed revisions are limited in scope to support implementation of the Build America, Buy America Act provisions of the Infrastructure Investment and Jobs Act; and to clarify existing requirements. These proposed revisions provide further guidance on implementing these statutory requirements, and improve Federal financial assistance management and transparency.

DATES: Comments are due March 13, 2023. Please note that all public comments received are subject to the Freedom of Information Act and will be posted in their entirety, including any personal and business confidential information provided. Do not include any information you would not like to be made publicly available.

ADDRESSES: Comments on this proposal must be submitted electronically before the comment closing date to *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Please contact Dede Rutberg, Office of Management and Budget, 202–881–7359, or via email (preferred) at *Diana.s.rutberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

Background

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (''IIJA''), Public Law 117–58, which includes the Build America, Buy America Act (''the Act''). The Act required by May 14, 2022—180 days after the enactment of the IIJA—the head of each covered Federal agency shall ensure that ''none of the funds made available for a Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.'' The Act affirms, consistent with Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers (''the Executive order''), this Administration's priority to ''use terms and conditions of Federal financial assistance awards to maximize the use of goods, products, and materials produced in, and services offered in, the United States.''

The Act provides statutory authorities for the Made in America Office (MIAO) in OMB to maximize and enforce compliance with Made in America Laws. On April 18, 2022, OMB released M–22–11 *Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure* (OMB Guidance), which provides implementation guidance to Federal agencies on the application of: (1) a ''Buy America'' preference to Federal financial assistance programs for infrastructure; and (2) a transparent process to waive such a preference, when necessary and consistent with the law. The OMB Guidance also provides ''preliminary and non-binding'' guidance on the definition of construction materials, while OMB obtained stakeholder input on potential refinement of that definition and standards for manufacturing processes.

OMB is proposing a new part 184 in 2 CFR chapter I to support implementation of the Act, and clarify existing requirements within 2 CFR 200.322. The proposed revisions are intended to improve uniformity and consistency in the implementation of ''Build America, Buy America'' (BABA) requirements across the Government.

OMB proposes these revisions after consultation and in collaboration with agency representatives. In addition, OMB solicited feedback from the public and the broader Federal financial assistance community through a Notice of Listening Sessions and Request for Information (87 FR 23888) published on April 21, 2022, for construction materials. OMB made changes to the proposed revisions based on feedback received, as appropriate. OMB also considered feedback from requests for information published by the Department of Transportation on July 28, 2022 (87 FR 45396), and the Department of Housing and Urban Development on June 1, 2022 (87 FR 33193).

Changes Proposed by OMB and Expected Impact

OMB is proposing a new part 184 in 2 CFR chapter I and revisions to 2 CFR 200.322, Domestic preferences for procurements. The revision adds a new part addressing the Buy America Preference for all awards with infrastructure expenditures set forth in section 70914 of the Act. The new part generally aligns with OMB Guidance provided in OMB memorandum M–22–11. The new part also provides definitions for the purposes of 2 CFR part 184 and a common framework for applying Buy America Preferences to Federal Financial Assistance. In so doing, these revisions will provide consistent implementation of Buy America requirements for infrastructure projects Government-wide.

The new part 184 includes guidance for determining the cost of manufactured products, and proposes to use the definition of ''cost of components'' in the Federal Acquisition Regulation (FAR) (48 CFR 25.003) that is used for Federal procurement. Using this definition of ''cost of components'' for determining the cost of manufactured products for Federal Financial Assistance aims to provide consistent and clear market requirements for industry to meet one standard for determining the cost of components of manufactured products. OMB is soliciting specific feedback on guidance proposed in this section.

OMB is required by the Act to issue standards that define ''all manufacturing processes'' in the case of construction materials. While OMB memorandum M–22–11 provides ''preliminary and non-binding'' guidance on the definition of construction materials, the new part 184 includes OMB's proposed standards for ''all manufacturing processes'' for the manufacture of construction materials. These proposed standards are based on industry feedback, agency consultation, and market research

conducted for each construction material.

OMB is proposing to modify 2 CFR 200.322 to direct the Federal agency to the new part in chapter I (2 CFR part 184) for guidance on all awards that include infrastructure projects.

Executive Orders 12866 and 13563

Executive Orders (EOs) 12866 and 13563 direct 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). This is not a significant action under E.O. 12866.

Paperwork Reduction Act

This guidance does not contain a requirement for information collection and thus the Paperwork Reduction Act does not apply.

Request for Comments Regarding Proposed 2 CFR Part 184 Amendments

OMB requests public comment on the proposed guidance. Public comments are particularly invited on:

• *(1) Cost of components.* In determining the ''cost of components'' for manufactured products for purposes of this guidance, should OMB adopt a definition based on the definition provided in the FAR at 48 CFR 25.003?

○ We note that under 48 CFR 25.003, Cost of components means—

1. For components purchased by the contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product or construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

2. For components manufactured by the contractor, all costs associated with the manufacture of the component, including transportation costs as described in item 1., plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

○ The definition for ''cost of components'' at 48 CFR 25.003 refers to components ''purchased by the contractor'' and ''components manufactured by the contractor.'' In the context of Federal financial assistance for an infrastructure project, is the ''contractor'' the appropriate subject for OMB to use in the standard proposed in this guidance? Should OMB delete ''by the contractor'' when used in the standard in this guidance? Should OMB insert an alternate subject in the standard? For example, the ''manufacturer'' or some other entity?

○ The definition for ''cost of components'' at 48 CFR 25.003 uses certain terms defined in the FAR but not in this proposed guidance including ''end product'' and ''component.'' ''End product'' is defined in the FAR to mean ''those articles, materials, and supplies to be acquired for public use.'' 48 CFR 25.003. ''Component'' is defined in the FAR to mean ''an article, material, or supply incorporated directly into an end product or construction material.'' *Id.* In the context of manufactured products, should OMB use the FAR definitions for ''end product'' and ''component''? If OMB uses the FAR definitions for these terms, should it make any conforming changes for this guidance or changes to provide additional clarity?

○ The definition for ''cost of components'' at 48 CFR 25.003 includes a reference to ''construction materials.'' Because the standard proposed in this guidance will only apply to manufactured products, OMB proposes to delete the reference to construction materials.

○ OMB intends to adopt the ''cost of components'' standard from FAR for manufactured products in this guidance for Federal Financial Assistance with minimal modification to ensure that there are consistent and clear market requirements for industry to meet one standard for determining the cost of components of manufactured products. Is there a reason OMB should apply a different standard?

• *(2) Other construction material standards.* What, if any, additional construction materials should be included in the proposed guidance? OMB requests feedback on the inclusion of the following construction materials and proposed standards for manufacturing processes for those construction materials to determine if they are produced in the United States:

○ *Coatings (e.g., paint, stain, and other coatings applied at the work site):* All manufacturing processes, from initial mixing of pigments, resin, solvents, and additives through final canning or other packaging, occurred in the United States.

○ *Brick:* All manufacturing processes, from initial tempering and forming through cooling and de-hacking, occurred in the United States.

○ *Engineered wood products:* Are engineered wood products covered under the definition of ''lumber,'' or are engineered wood products a different category of construction material? If a separate category, should engineered wood products be defined as: ''All manufacturing processes, from initial debarking through pressing, trimming, and sanding of glued sheets or boards, occurred in the United States.''

○ Other than those specifically listed, should other construction materials and subsequent manufacturing processes be included in the category of construction materials? We note that a general, catchall category of ''other construction materials'' is not a feasible option because it would not allow recipients to distinguish between ''manufactured products'' and ''construction materials'' when determining what standard applies to an item. If other specific construction materials should be included, please identify them and the standards that should apply to them.

• *(3) Proposed definition of construction materials.* Is additional guidance needed on the proposed definition of construction materials? In this proposed guidance, OMB only intends to classify materials that consist of only one or more of the construction materials listed in § 184.3(c)(1) as construction materials. However, OMB also seeks to avoid disqualifying construction materials with only *de minimis* additions of non-construction materials. For example, if *de minimis* additions of non-construction materials do not add significant value to, or substantially transform, the otherwise qualifying construction material, they should not change the categorization of the material under this guidance.

• *(4) Definition for ''predominantly'' iron or steel items.* To be consistent with certain existing Buy America and Buy American laws and policies, or for other reasons, should OMB adopt a definition of ''predominantly'' iron or steel items? Other reasons for providing such a definition may include efficiency and to help differentiate between categories of products. What, if any, definition of the term ''predominantly'' should be provided in this guidance in the case of iron or steel products, as reflected in the definitions of ''manufactured products'' and ''iron and steel products'' in § 184.3 of this guidance. OMB is specifically interested in feedback on whether it should adopt a definition of the term ''predominantly'' similar to the definition of the term ''predominantly of iron or steel or a combination of both'' in the FAR at 48 CFR 25.003 so that Federal procurement requirements through the FAR are aligned with the uniform guidance in order to reduce burden on industry. The definition of ''predominantly of iron or steel or a combination of both'' in the FAR at 48 CFR 25.003 means that the cost of the iron and steel content exceeds 50

percent of the total cost of all its components; and also addresses the meaning of ''the cost of iron and steel.''

• *(5) How to distinguish between categories of products.* Is further guidance needed on how to distinguish between steel or iron products, manufactured products, and construction materials? For example, OMB Guidance explained that items that consist of two or more of the listed construction materials that have been combined together through a manufacturing process, and items that include at least one of the listed construction materials combined through a manufacturing process with a material that is not listed as a construction material, should be treated as manufactured products, rather than as construction materials. Relative to the OMB Guidance, OMB has proposed a modified approach in this guidance for distinguishing among categories of products. That approach is set forth in the proposed definitions under § 184.3 and in particular under the definition for construction materials at § 184.3(c). OMB seeks feedback on the approach proposed in this guidance relative to the approach in the earlier OMB Guidance.

• *(6) Meaning of composite building materials.* The definition of ''construction materials'' in § 184.3 of this proposed guidance includes ''composite building materials'' as an example of ''plastic and polymer-based products.'' This is based on the congressional findings on ''common construction materials'' in section 70911(5) of the Act. Section 184.6 of the proposed guidance includes ''composite building materials'' as a stand-alone category of ''construction materials.'' Should OMB include ''composite building materials'' as a sub-category of plastic and polymer-based products or as a stand-alone category? Is further guidance needed on the meaning of the term to distinguish it from ''plastic and polymer-based products'' in general? If additional guidance is needed, how should ''composite building materials'' be defined?

• *(7) Fiber optic cables and optical fibers.* Congress identified the elements of a completed fiber optic cable as construction materials for which all manufacturing processes must occur in the United States. The definition of ''construction materials'' in § 184.3 of this proposed guidance includes ''polymers used in fiber optic cables'' as an example of ''plastic and polymer-based products.'' This is based on the congressional findings on ''common construction materials'' in section 70911(5) of the Act. OMB also proposes in this guidance that the final fiber optic cable and optical fibers be treated as construction materials. Sections 184.3 and 184.6 of the proposed guidance include ''fiber optic cable'' and ''optical fibers'' as two stand-alone categories of ''construction materials.'' Is there any reason the standards in § 184.6 of this proposed guidance should be applied differently for optical fibers that include both plastic and polymer-based components and glass components? Is further guidance needed on the meaning of the terms ''fiber optic cable'' and ''optical fibers''?

• *(8) Standards applicable to optical fiber and optic glass.* The definition of ''construction materials'' in § 184.3 of this proposed guidance includes ''optic glass'' as an example of ''glass products.'' This is based on the congressional findings on ''common construction materials'' in section 70911(5) of the Act. Section 184.6 of the proposed guidance does not include a stand-alone category for ''optic glass,'' but does include a stand-alone category for ''optical fiber.'' Is any additional guidance needed on this topic?

• *(9) Aggregates.* Section 70917(c) of the Act provides that the term construction materials shall not include the following materials: (i) cement and cementitious materials; (ii) aggregates such as stone, sand, or gravel; or (iii) aggregate binding agents or additives (the ''Excluded Materials''). However, the Act does not specify whether these Excluded Materials should be entirely excluded from coverage under Buy America Preferences. How should OMB treat Excluded Materials in the context of the manufactured product Buy America Preference under this guidance? For example, how should the guidance treat Excluded Materials made of a combination of raw materials or combined with other raw materials to create a material that has different properties than the properties of the individual raw materials? In defining manufactured products in this guidance in § 184.3, should OMB supplement the proposed definition by adding the standard under 2 CFR 176.140(a)(1), which defines a ''manufactured good'' as ''a good brought to the construction site for incorporation into the building or work that has been—(i) Processed into a specific form and shape; or (ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.'' That is, should OMB exclude raw aggregates (such as stone, sand, or gravel) unless they have been processed into a specific form or shape or combined with other raw materials, such as combining them with cement powder and water to produce precast concrete products? How should OMB treat cement and cementitious materials before they are processed into a specific form and shape?

• *(10) Specific sections of proposed guidance.* Please provide suggestions on specific sections of the proposed guidance. Please provide clarity as to the section of the guidance that each comment is referencing by beginning each comment with the section number in brackets. *For example; if the comment is on 2 CFR 184.1 include the following before the comment: 184.1.*

• *(11) Reducing burden on recipients.* Please provide suggestions for reducing burden for recipients.

List of Subjects

2 CFR Part 184

Administration of Federal financial assistance, Administrative practice and procedure, Federal financial assistance programs.

2 CFR Part 200

Administration of Federal financial assistance, Administrative practice and procedure, Federal financial assistance programs.

For the reasons stated in the preamble, the Office of Management and Budget proposes to amend 2 CFR subtitle A as follows:

■ 1. Add part 184, consisting of §§ 184.1 through 184.8, to read as follows:

PART 184—BUY AMERICA PREFERENCES FOR INFRASTRUCTURE PROJECTS

Sec.
184.1 Purpose of this part.
184.2 Applicability.
184.3 Definitions.
184.4 Applying the Buy America Preference to a Federal award.
184.5 Determining the cost of components for manufactured products.
184.6 Construction material standards.
184.7 Federal awarding agency's issuance of a Buy America Preference waiver.
184.8 Exemptions to the Buy America Preference.

Authority: Pub. L. 117–58, 135 Stat. 429.

§ 184.1 Purpose of this part.

This part provides guidance to Federal awarding agencies on the implementation of the Buy America Preference applicable to Federal financial assistance set forth in part I of subtitle A, Buy America Sourcing Preferences, of the Build America, Buy America Act included in the Infrastructure Investment and Jobs Act (Pub. L. 117–58) at division G, title IX, subtitle A, part I, sections 70912 through 70917. Section 70914 of the

Build America, Buy America Act requires the head of each Federal agency to ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.

§ 184.2 Applicability.

This part applies to a Federal award for an infrastructure project only to the extent that a Buy America Preference meeting or exceeding the requirements of section 70914 of the Build America, Buy America Act did not apply to iron, steel, manufactured products, and construction materials in the Federal financial assistance program under which the Federal award is provided before November 15, 2021.

§ 184.3 Definitions.

Terms not defined in this part shall have the same meaning as provided in 2 CFR part 200, subpart A. As used in this part:

Build America, Buy America Act means division G, title IX, subtitle A, part I, sections 70901 through 70927 of the Infrastructure Investment and Jobs Act (Pub. L. 117–58).

Buy America Preference means the ''domestic content procurement preference'' set forth in section 70914 of the Build America, Buy America Act, which requires the head of each Federal agency to ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.

Construction materials means articles, materials, or supplies incorporated into an infrastructure project that consist of only one or more of the following materials, except as provided in paragraph (2) of this definition:

(1)(i) Non-ferrous metals;

(ii) Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);

(iii) Glass (including optic glass);

(iv) Fiber optic cable;

(v) Optical fiber;

(vi) Lumber; or

(vii) Drywall.

(2) For an item that consists only of a combination of one or more of the construction materials listed in paragraph (1) of this definition and binding agents, any binding agents shall be disregarded, and each construction material must meet the Buy America Preference standard defined in § 184.6.

Infrastructure project is any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project.

Iron or steel products means articles, materials, or supplies incorporated into an infrastructure project that consist wholly or predominantly of iron, steel, or both.

Manufactured products means articles, materials, or supplies incorporated into an infrastructure project that:

(1) Do not consist wholly or predominantly of iron or steel or both; and

(2) Are not categorized as a construction material (as defined in this section).

Produced in the United States means the following, for:

(1) *Iron and steel products.* All manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) *Manufactured products.* (i) The product was manufactured in the United States; and

(ii) The cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation. The costs of components of a manufactured product are determined according to § 184.5.

(3) *Construction materials.* All manufacturing processes for the construction material occurred in the United States. See § 184.6 for more information on the meaning of ''all manufacturing processes'' for specific construction materials.

§ 184.4 Applying the Buy America Preference to a Federal award.

(a) The Buy America Preference applies to awards where funds are appropriated or otherwise made available for infrastructure projects in the United States, regardless of whether infrastructure is the primary purpose of the award.

(b) All Federal awards with infrastructure projects must include the Buy America Preference in the terms and conditions. The Buy America Preference must be included in all subawards, contracts and purchase orders for the work performed, or products supplied under the award. The terms and conditions of a Federal award flow down to subawards to subrecipients unless a particular section of the terms and conditions of the Federal award specifically indicate otherwise.

(c) Infrastructure encompasses public infrastructure projects which includes at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.

(d) The Federal awarding agency should interpret the term ''infrastructure'' broadly and consider the description provided in paragraph (c) of this section as illustrative and not exhaustive. When determining if a particular project of a type not listed in the description in paragraph (c) constitutes ''infrastructure,'' the Federal awarding agency should consider whether the project will serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public.

§ 184.5 Determining the cost of components for manufactured products.

In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following definitions:

(a) For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(b) For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a) of this section, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs

associated with the manufacture of the end product.

§ 184.6 Construction material standards.

The Buy America Preference applies to the following construction materials used in infrastructure projects. Each construction material is followed by a standard for the material to be considered ''produced in the United States.''

(a) *Non-ferrous metals.* All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.

(b) *Plastic and polymer-based products.* All manufacturing processes, from initial combination of constituent, plastic or polymer-based inputs until the item is in a form in which it is delivered to the work site and incorporated into the project, occurred in the United States.

(c) *Composite building materials.* All manufacturing processes, from initial combination of constituent materials until the composite material is in a form in which it is delivered to the work site and incorporated into the project, occurred in the United States.

(d) *Glass.* All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.

(e) *Fiber optic cable.* All manufacturing processes, from the initial preform fabrication stage through fiber stranding and jacketing, occurred in the United States.

(f) *Optical fiber.* All manufacturing processes, from the initial preform fabrication stage through fiber stranding, occurred in the United States.

(g) *Lumber.* All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.

(h) *Drywall.* All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.

§ 184.7 Federal awarding agency's issuance of a Buy America Preference waiver.

(a) A Federal awarding agency may waive the application of the Buy America Preference in any case in which it finds that:

(1) Applying the Buy America Preference would be inconsistent with the public interest (a ''public interest waiver'');

(2) Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a ''nonavailability waiver''); or

(3) The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (an ''unreasonable cost waiver'').

(b) A request from a non-Federal entity to waive the application of the Buy America Preference must be provided to the Federal awarding agency in writing. Federal awarding agencies shall provide waiver request submission instructions and guidance on the format, contents, and supporting materials required for waiver requests from non-Federal entities.

(c) Before issuing a waiver, the Federal awarding agency must:

(1) Prepare a detailed written explanation for the proposed determination to issue the waiver, including for those proposed waivers based on a request from a non-Federal entity;

(2) Make the proposed waiver and the detailed written explanation publicly available in an easily accessible location on a website designated by the Federal awarding agency and the Office of Management and Budget;

(3) Provide a period of not less than 15 calendar days for public comment on the proposed waiver; and

(4) Before finalizing a waiver, submit the waiver determination to the Office of Management and Budget Made in America Office for final review pursuant to Executive Order 14005 and sections 70923(b)(2) and 70937 of the Infrastructure Investment and Jobs Act (Pub. L. 117–58).

(d) The review of existing waivers of general applicability are subject to a minimum 30-day public comment period.

§ 184.8 Exemptions to the Buy America Preference.

(a) The Buy America Preference does not apply to expenditures for assistance authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170a, 5170b, 16 5170c, 5172, 5174, or 5192) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act (42 U.S.C. 5170, 5191) or pre and post disaster or emergency response expenditures.

(b) ''Pre and post disaster or emergency response expenditures'' consist of expenditures for financial assistance that are:

(1) Authorized by statutes other than the Stafford Act, 42 U.S.C. 5121 *et seq.;* and

(2) Made in anticipation of or response to an event or events that qualify as an ''emergency'' or ''major disaster'' within the meaning of the Stafford Act, 42 U.S.C. 5122(1), (2).

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

■ 2. The authority citation for part 200 continues to read as follows:

Authority: 31 U.S.C. 503.

■ 3. Amend § 200.322 by adding paragraph (c) to read as follows:

§ 200.322 Domestic preferences for procurements.

* * * * *

(c) Federal awarding agencies providing Federal financial assistance for infrastructure projects must comply with the Buy America Preferences set forth in 2 CFR part 184.

Deidre A. Harrison,

Deputy Controller, Office of Federal Financial Management.

[FR Doc. 2023–02617 Filed 2–8–23; 8:45 am]

BILLING CODE 3110–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0039; Airspace Docket No. 23–AEA–1]

RIN 2120–AA66

Amendment of Class E Airspace; Altoona, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Altoona, PA. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Revloc very high frequency omnidirectional range (VOR) navigation aids as part of the VOR Minimum Operating Network (MON) Program. The name of the airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before March 27, 2023.

ADDRESSES: Send comments on this proposal to the U.S. Department of

Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone (800) 647–5527 or (202) 366–9826. You must identify FAA Docket No. FAA–2023–0039; Airspace Docket No. 23–AEA–1 at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.*

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E surface airspace and the Class E airspace extending upward from 700 feet above the surface at Altoona/Blair County Airport, Altoona, PA, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2023–0039; Airspace Docket No. 23–AEA–1) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for the address and phone number). You may also submit comment through the internet at *www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2023–0039/Airspace Docket No. 23–AEA–1.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at www.regulations.gov. Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Class E airspace is published in paragraphs 6002 and 6005 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. These updates would be published subsequently in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by:

Amending the Class E surface airspace to within a 9.3-mile (increased from a 4.7-mile) radius of Altoona/Blair County Airport, Altoona, PA; removing the extension northeast of the airport as it is no longer required; and updating the name (previously Altoona-Blair County Airport) of the airport to coincide with the FAA's aeronautical database;

And amending the Class E airspace extending upward from 700 feet above the surface to within an 11.8-mile (increased from an 11.2-mile) radius of Altoona/Blair County Airport; adding an extension 2 miles each side of the 196° bearing from the airport extending from the 11.8-mile radius to 12 miles south of the airport; and updating the name (previously Altoona-Blair County Airport) of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review caused by the decommissioning of the Revloc VOR, which provided navigation information for the instrument procedures at this airport, as part of the VOR MON Program and will support instrument flight rule operations at this airport.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance

with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

AEA PA E2 Altoona, PA [Amended]

Altoona/Blair County Airport, PA
(Lat. 40°17′47″ N, long. 78°19′12″ W)

Within a 9.3-mile radius of Altoona/Blair County Airport.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AEA PA E5 Altoona, PA [Amended]

Altoona/Blair County Airport, PA
(Lat. 40°17′47″ N, long. 78°19′12″ W)

That airspace extending upward from 700 feet above the surface within an 11.8-mile radius of Altoona/Blair County Airport; and within 2 miles each side of the 196° bearing from the airport extending from the 11.8-mile radius to 12 miles south of the airport.

Issued in Fort Worth, Texas, on February 6, 2023.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2023–02738 Filed 2–8–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 51

RIN 2900–AR62

Payments Under State Home Care Agreements for Nursing Home Care

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule; correction.

SUMMARY: On December 21, 2022, the Department of Veterans Affairs (VA) published in the **Federal Register** a proposed rule to amend its State home per diem regulation to provide a new formula for calculating the prevailing rate VA would pay a State home that enters into a State home care agreement to provide nursing home care to eligible veterans. This correction revises the contact information for the proposed rule.

DATES: The correction is effective February 9, 2023. The due date for comments remains February 21, 2023.

ADDRESSES: Comments must be submitted through *www.regulations.gov.* Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: *https://www.regulations.gov.* VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking.

FOR FURTHER INFORMATION CONTACT: Colette Alvarez, Chief of Staff Home Per Diem Program, Geriatrics and Extended Care (12GEC), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–6750. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: VA is correcting its proposed rule on Payments Under State Home Care Agreements for Nursing Home Care that published December 21, 2022, in the **Federal Register** (FR) at 87 FR 78038.

In FR Rule Doc. No. 2022–27436, beginning on page 78038 in the December 21, 2022 issue, VA makes the following correction:

On page 78038, under **FOR FURTHER INFORMATION CONTACT**, replace ''Lisa Minor, National Director, Facilities Based Care, Geriatrics and Extended Care, 12GEC, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–8320. (This is not a toll-free number.)'' with ''Colette Alvarez, Chief of Staff Home Per Diem Program, Geriatrics and Extended Care (12GEC), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–6750. (This is not a toll-free number).''

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2023–02708 Filed 2–8–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 17

[Docket No. FWS–HQ–ES–2021–0152; FF09E41000 223 FXES111609C0000]

RIN 1018–BF99

Endangered and Threatened Wildlife and Plants; Enhancement of Survival and Incidental Take Permits

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Proposed rule; request for public comments.

SUMMARY: We, the U.S. Fish Wildlife Service (Service), propose to revise the regulations concerning the issuance of enhancement of survival and incidental take permits under the Endangered Species Act of 1973, as amended. The purposes of these revisions are to clarify the appropriate use of enhancement of survival permits and incidental take permits; clarify our authority to issue these permits for non-listed species without also including a listed species; simplify the requirements for enhancement of survival permits by combining safe harbor agreements and candidate conservation agreements with assurances into one agreement type; and include portions of our five-point policies for safe harbor agreements, candidate conservation agreements with

assurances, and habitat conservation plans in the regulations to reduce uncertainty. We also propose to make technical and administrative revisions to the regulations. The proposed regulatory changes are intended to reduce costs and time associated with negotiating and developing the required documents to support the applications. We anticipate that these improvements will encourage more individuals and companies to engage in these voluntary programs, thereby generating greater conservation results overall.

DATES:

Comments: We will accept comments from all interested parties until April 10, 2023. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**, below), the deadline for submitting an electronic comment is 11:59 p.m. eastern time on this date.

Information Collection Requirements: If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, (see ''Information Collection'' section below under **ADDRESSES**) by April 10, 2023.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–HQ–ES–2021–0152, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–HQ–ES–2021–0152, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

Information Collection Requirements: Send your comments on the information collection request by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, by email to *Info_Coll@fws.gov;* or by mail to 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803. Please reference OMB Control Number 1018–0094 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Lisa Ellis, Chief, Branch of Recovery and Conservation Planning, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone: 703–358–2307. 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 Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), states that its purposes are to provide a means to conserve the ecosystems upon which listed species depend, to develop a program for the conservation of listed species, and to achieve the purposes of certain treaties and conventions. Moreover, the ESA states that it is the policy of Congress that the Federal Government will seek to conserve endangered and threatened species and use its authorities to further the statutory purposes (16 U.S.C. 1531(c)(1)). The regulations implementing the ESA are in title 50 of the Code of Federal Regulations (CFR).

The 1982 ESA amendments added section 10(a) to provide a mechanism for issuance of permits to non-Federal entities to authorize take of listed species that would otherwise be prohibited under section 9. Section 10(a)(1)(A) provides for the issuance of enhancement of survival permits associated with conservation actions that are beneficial to the species included on the permit.

In 1999 we promulgated regulations (at 50 CFR 17.22(c) and (d) and 50 CFR 17.32(c) and (d)) and finalized policies regarding safe harbor agreements (SHAs) and candidate conservation agreements with assurances (CCAAs) to incentivize the use of enhancement of survival permits to further species recovery and conservation (64 FR 32706, 32717, and 32726; June 17, 1999).

We published minor corrections to the SHA and CCAA regulations later in 1999 (64 FR 52676, September 30, 1999) and again in 2004 (69 FR 24084, May 3, 2004). In 2016, we revised the CCAA regulations at §§ 17.22(d) and 17.32(d) (81 FR 95053, December 27, 2016) and policy (81 FR 95164, December 27, 2016) to simplify the net conservation benefit standard as part of the issuance criteria.

Section 10(a)(1)(B) of the ESA allows for the issuance of incidental take permits to authorize take that is incidental to, but not the purpose of, carrying out otherwise lawful activities, provided the application meets the statutory issuance criteria (16 U.S.C. 1539(a)(2)(A)(i)–(iv)). In 1985, we promulgated regulations under section 10(a)(1)(B) (at 50 CFR 17.22(b) and 17.32(b), per 50 FR 39681, September 30, 1985). In 1996 we issued guidance in the form of the Habitat Conservation Planning and Incidental Take Permitting Processing Handbook (61 FR 63854, December 2, 1996). We published an addendum to the handbook as the ''five-point policy'' in 2000 (65 FR 35242, June 1, 2000), and we published a revised Habitat Conservation Planning Handbook in 2016 (81 FR 93702, December 21, 2016).

This proposed revision to the implementing regulations for section 10 is related to enhancement of survival permits supported by SHAs and CCAAs (§§ 17.22(c) and (d) and 17.32(c) and (d)) and to incidental take permits supported by a conservation plan, also known as a habitat conservation plan (§§ 17.22(b) and 17.32(b)). This rulemaking also proposes changes to relevant portions of 50 CFR part 13 (which applies to all Service permits) and part 17 (which applies to all Service permits under the ESA). As part of this rulemaking, the Service will consider whether additional modifications to section 10(a)(1)(A) and 10(a)(1)(B) regulations would improve, clarify, or expedite the administration of the ESA.

The Service proposes to revise the regulations to reduce the time it takes for applicants to prepare and develop the required documents to support applications for section 10(a) permits, thus accelerating permitting and conservation implementation. We propose to accomplish this goal by:

- clarifying the appropriate permit mechanism for authorizing take;
- simplifying our permitting options under section 10(a)(1)(A) by combining CCAAs and SHAs into one agreement type and allowing the option to return to baseline;
- providing additional flexibility under section 10(a)(1)(B) to issue permits for non-listed species without a listed species also on the permit; and

• clarifying the requirements for complete applications under both permitting authorities.

These changes should reduce costs and time associated with negotiating and developing the required documents to support the applications. We anticipate that these improvements will encourage more individuals and companies to engage in these voluntary programs, thereby generating greater conservation results overall.

We propose to clarify under which authority it is appropriate to authorize the proposed take, either through an enhancement of survival or incidental take permit. Enhancement of survival permits authorize take of covered species, above the baseline condition, when the primary purpose of the associated conservation agreement is to implement beneficial actions that address threats to the covered species, establish new wild populations, or otherwise benefit the covered species. In contrast, incidental take permits authorize take that is incidental to otherwise lawful activities (*e.g.,* resource extraction, commercial and residential development, and energy development); the conservation actions in the associated conservation plan minimize and mitigate the impacts of the authorized take. Maintaining this distinction between these two permit types will ensure take is sought through and authorized under the proper authority, reduce confusion, and expedite the permitting process.

This proposal clarifies that enhancement of survival and incidental take permits can be issued for non-listed species without including a listed species on the permit. Immediately upon permit issuance, the permittee would begin implementing the conservation commitments for the non-listed covered species. However, the take authorization would not go into effect until such time as the non-listed covered species becomes listed, either as endangered or threatened, provided the permittee is complying with the permit and properly implementing the agreement or plan. This approach is consistent with both (1) enhancement of survival permits currently issued for non-listed species under 50 CFR 17.22(d) or 17.32(d) and supported by a CCAA; and (2) incidental take permits currently issued under 50 CFR 17.22(b) or 17.32(b) supported by a conservation plan that includes both listed and non-listed species. Our approach furthers the statutory purposes of the ESA by encouraging conservation of fish and wildlife before species become depleted to the point that they require listing. We propose to simplify the ESA section 10(a)(1)(A) regulations by covering both listed and non-listed species for enhancement of survival permits under §§ 17.22(c) and 17.32(c), and by rescinding the CCAA regulations under §§ 17.32(d) and 17.32(d).

We are proposing to clarify the language in both §§ 17.22(b) and (c) and 17.32(b) and (c) to emphasize that our authority extends to authorizing take that would otherwise be prohibited under section 9 of the ESA, rather than to authorize the applicant's proposed conservation activities or the otherwise lawful activities that may result in take of a covered species. In other words, the issuance of enhancement of survival or incidental take permits does not authorize the covered activities themselves, but instead authorizes only the take of covered species resulting from those activities. This clarification is proposed at §§ 17.22(b)(1) and 17.32(b)(1) for regulations related to section 10(a)(1)(B) permits and at §§ 17.22(c)(1) and 17.32(c)(1) for regulations related to section 10(a)(1)(A) permits. We further clarify what constitutes a complete application for enhancement of survival and incidental take permits and that the Service will process an application when we have determined it to be complete.

Under section 10(a)(1)(A), we propose regulation changes that combine the SHA and CCAA into one type of conservation agreement, also known as a conservation benefit agreement. We use the term ''conservation benefit agreement'' to describe the supporting document required for an enhancement of survival permit. The goal of this proposed change is to simplify the process for new conservation benefit agreements developed in support of enhancement of survival permit applications. We are also proposing that applicants for an enhancement of survival permit would have the option, currently available in an SHA, to return the property to baseline conditions. We propose to define ''baseline condition'' to mean the population estimates and distribution or habitat characteristics on the enrolled land that sustain seasonal or permanent use by the covered species at the time a conservation benefit agreement is approved by the Service and executed by the property owner or by a programmatic permit holder and the property owner. Providing applicants with a choice whether to return to baseline condition provides more flexibility in the agreement and may increase participation. In addition, we clarify that the Service may issue enhancement of survival permits that authorize both incidental and purposeful take that may occur as a result of implementing beneficial actions under the conservation benefit agreement, such as reintroducing a species to a covered property or capturing and relocating a covered species that may have dispersed to an adjacent property not subject to the agreement. Once these proposed regulations are finalized, the Service will no longer implement the SHA and CCAA policies.

Under section 10(a)(1)(B), we propose to incorporate aspects of the five-point policy for incidental take permits and guidance from the 2016 Habitat Conservation Planning Handbook into the regulations to reduce confusion and streamline the process. Clarifications include a description of the requirements for a complete incidental take permit application and revisions to the corresponding incidental take permit issuance criteria. Nothing in these proposed revisions to the regulations is intended to require that any previous permits issued under section 10(a)(1)(A) or (B) be reevaluated when this rule is finalized. However, future applications for new permits, renewals, or amendments would be subject to the revisions in the final rule.

Proposed Revisions to 50 CFR Part 13 and Part 17

Part 13 of title 50 of the Code of Federal Regulations sets forth general permitting regulations that apply to all permits issued by the Service. We are proposing changes to part 13 to address the specific revisions we are seeking in §§ 17.22 and 17.32, and to clarify points of contention in the administration of permits under §§ 17.22 and 17.32. Because this proposed rule would rescind §§ 17.22(d) and 17.32(d), the references in part 13 to those paragraphs would be removed and modified to reference the remaining paragraphs (*i.e.,* references to § 17.22(b) through (d) would be changed to § 17.22(b) and (c) and references to § 17.32(b) through (d) would be changed to § 17.32(b) and (c)).

Clarification of ESA Section 10(a)(1)(A) and (B)—Purpose

Section 10(a)(1)(A) authorizes the issuance of permits, under certain terms and conditions, for any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species. In 1999, the Service further clarified in §§ 17.22(c) and (d) and 17.32(c) and (d) and the SHA and CCAA policies that conservation actions to enhance the survival of affected species would be permitted under section 10(a)(1)(A) enhancement of survival permits. The permit is intended to incentivize

voluntary conservation by authorizing any take of covered species that may result from implementing the approved conservation benefit agreement and providing assurances that we will not require an increased commitment or impose additional restrictions on the permittee's use of land, water, or financial resources. As a result, a property owner may continue ongoing activities and implement beneficial conservation measures without concern that their activities may be curtailed by increasing populations or distribution of a listed species or a species that may become listed in the future. Therefore, property owners managing or improving habitat that could be used by a species that is listed or could be listed, or establishing new populations of such species, have an incentive to continue their activities without fear of being subjected to increased regulatory burdens in the future.

The authority granted under section 10(a)(1)(B) allows for the issuance of a permit to authorize take that would otherwise be prohibited by section 9(a)(1)(B), provided the taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Under section 10(a)(1)(B), the impacts of the take associated with the otherwise lawful activities must be minimized and mitigated to the maximum extent practicable. The purpose is to provide a means for ESA compliance when otherwise lawful development activities cause take of listed species. In contrast, under section 10(a)(1)(A), the primary purpose is to incentivize voluntary conservation of listed and at-risk species.

Take Authorization for Non-Listed Species Under Section 10(a)(1)(A) and (B)—Authorities and Rationale

The Service currently issues both enhancement of survival and incidental take permits that cover take of listed as well as non-listed species should they become listed in the future. These permits are issued upon the Service's approval of the application. Implementation of the conservation measures for the non-listed species begins upon issuance of the permit. Should the non-listed species become listed, the take authorization becomes effective upon the date of listing, provided that the permittee is in full compliance with the enhancement of survival or incidental take permit. This approach is supported in the House of Representatives Report on the Endangered Species Act Amendments of 1982 (Report number 97–835).

On June 17, 1999, the Service published the CCAA Policy (64 FR 32726) and implementing regulations at 50 CFR 17.22(d) and 17.32(d) (64 FR 32706) under section 10(a)(1)(A) of the Act for issuing enhancement of survival permits for non-listed species. The Service further revised this policy and the regulations in 2016 (81 FR 95053 and 95164; December 27, 2016). Since the initial policy and regulations were published, the Service has issued 65 enhancement of survival permits for non-listed species in association with a CCAA; 59 of these continue to be implemented.

Revising the regulations to clarify that we can issue permits that address only non-listed species under section 10(a)(1)(B) is consistent with congressional intent to provide long-term regulatory assurances and builds on the success demonstrated by the CCAA program. Recognizing our ability to authorize take of non-listed species under section 10(a)(1)(B) in the event that they become listed under the ESA, alone or combined with listed species, will help to ensure that take is authorized under the appropriate permit authority depending upon whether it is associated with beneficial conservation actions or otherwise lawful activities. We expect that this clarification will reduce confusion and eliminate debate regarding the appropriate permit authority by which take should be authorized, thereby allowing the planning efforts to be focused on the permitting mechanism that is most applicable to the project purpose. We acknowledge that the Habitat Conservation Planning Handbook reflects current regulations and states that applicants must include at least one ESA-listed species in a conservation plan. If this proposed change is finalized, we intend to update the handbook accordingly.

Clarifications

Service Authority Extends To Authorizing Take, Not Authorizing the Activities

Existing language in § 17.22(b)(1) and (c)(1) and § 17.32(b)(1) and (c)(1) refers to authorizing activities that are prohibited. The ESA prohibits take of listed species, not the activities that cause take. Therefore, we propose language that will clarify that, under these authorities, the Service authorizes take and not the underlying activities themselves. We expect that this change will reduce confusion among applicants and the interested members of the public who review and provide comments on permit applications.

Expediting the Development of Conservation Benefit Agreements and Conservation Plans

One of the common concerns expressed by applicants applying for a permit under section 10(a)(1)(A) or (B) is the amount of time and resource investment it takes to develop the necessary documents to support the applications. The application process for an enhancement of survival or incidental take permit is divided into three phases: (1) pre-application (project proponent decides whether to apply for a permit); (2) conservation benefit agreement or plan development and submission of a complete application to the Service; and (3) application processing (the Service processes the complete application and makes a permit decision).

While the Service has successfully implemented measures to ensure the efficient processing of permit applications once they are deemed complete, we have not been as successful with expediting the pre-application and conservation agreement or plan development phases despite the updated guidance provided respectively in the 2016 Habitat Conservation Planning Handbook and current SHA and CCAA regulations, policies, and guidance. This outcome may be due to several factors, such as the size and complexity of the proposed project; number of species for which take is sought; and, in some cases, challenges to the interpretation of our regulations, policies, and guidance. Resolving issues that arise during development of the conservation agreement or plan often requires the expenditure of a significant amount of time and resources by both the applicant and the Service. This situation can result in delays to the applicant's project implementation and limit the Service's ability to provide timely assistance to other applicants.

To provide clarity, reduce confusion, and save time, both for applicants and the Service, we propose to clarify the current regulations and revise the requirements for permit applications in § 17.22(b)(1) and (c)(1) and § 17.32(b)(1) and (c)(1) by codifying portions of the 2016 Habitat Conservation Planning Handbook, 5-point policy, SHA policy, and CCAA policy, as applicable. These clarifications address the requirements an applicant must meet for the Service to: (1) determine that an application is complete, (2) publish the receipt of a complete application, (3) begin processing the application, and (4) make a permit decision consistent with section 10 of the ESA.

We also propose to refine the incidental take permit issuance criteria under § 17.22(b)(2) and § 17.32(b)(2) for plans permitted under ESA section 10(a)(1)(B) to align with the statute, existing policy, and practice. We expect that these revisions, along with the revised requirements for a complete application, will lead to more efficient permit application processing and decision-making and provide a better record supporting our permit decision. The issuance criteria for conservation benefit agreements permitted under ESA section 10(a)(1)(A) will remain unchanged, although we clarify the meaning of ''net conservation benefit'' in the definitions section at § 17.3. The proposed revisions related to issuance criteria in parts 13 and 17 are limited to permits issued under ESA section 10(a) and do not address other statutes.

Permit Renewal and Amendment Processes

The Service proposes to clarify that permit renewals and amendments, or a combination thereof, are subject to the current laws and regulations. The application must be evaluated under current policies and guidance in place at the time of the decision on the renewal or amendment. For amendments to enhancement of survival or incidental take permits, the scope of the Federal decision extends only to the requested amendment, not the previously approved permit or unchanged portions of the conservation benefit agreement or plan. The terms of the original permit, including the take authorization and assurances, remain in effect. The proposed amendment is the only change that is considered. Providing these clarifications will reduce confusion and burden and also reassure permittees applying for renewals and amendments, thereby expediting development of a complete application and processing of that application.

Public Comments

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. Comments must be submitted to *https://www.regulations.gov* before 11:59 p.m. (eastern time) on the date specified in **DATES**. We will not consider mailed comments that are not postmarked on or before the date specified in **DATES**.

We seek public comments on the proposed revisions to parts 13 and 17 of the ESA regulations in title 50 including, but not limited to, revising or adopting as regulations existing practices or policies, or interpreting terms or phrases from the ESA. Based on comments received on this proposed rule and from our advance notice of proposed rulemaking related to regulatory reform (77 FR 15352, March 15, 2012), and on our experience in administering the ESA, the final rule may include revisions to any provisions in parts 13 and 17 that are a logical outgrowth of this proposed rule, consistent with the Administrative Procedure Act (5 U.S.C. 551 *et seq.*).

We particularly seek comment on:

(1) The extent to which the changes outlined in this proposed rule will affect timeframes and resources needed to plan and process permits;

(2) anticipated cost savings resulting from the proposed changes, if any;

(3) the impact to the conservation delivered through these permit programs; and

(4) specific language that would be a logical outgrowth of these proposed changes that would enhance our ability to meet the goals and objectives of these proposed regulatory revisions.

We also seek public comment and data on the amount of privately held land that contains listed and non-listed species and that could potentially be permitted under these proposed regulatory revisions and on the potential for an increase in permit applications, particularly in response to the proposed provision regarding return to baseline. Providing applicants with a choice whether to return to baseline condition provides more flexibility in the agreement and may increase participation. In addition to reviewing any public comments received on these issues, we will attempt to identify data sources to inform conclusions about the direction and possible magnitude of increased participation in this permitting program.

We will post your entire comment—including your personal identifying information—on *https://www.regulations.gov.* If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this proposed rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 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. E.O. 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. We have developed this rule in a manner consistent with these requirements. This proposed rule is consistent with E.O. 13563, and in particular with the requirement of retrospective analysis of existing rules to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency, or their designee, certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We have determined that, if adopted as proposed, this proposed rule would not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The proposed rule, if adopted, would revise the implementing regulations to clarify existing statutory requirements

that govern the Service's processing of applications for section 10(a) permits. The proposed rule would not significantly change the way we currently implement the section 10 program or expand the reach of species protections. To the extent the revisions relate to the documents required to support a permit application, they clarify the requirements for those documents but do not impose additional requirements that would result in significant increased costs to small entities. For example, the ESA requires applicants to ensure that adequate funding will be available to implement a conservation plan. In the proposed rule, we clarify that applicants for certain conservation plans must provide a financial analysis by an independent, qualified third party. Even if there are some increased costs associated with meeting this or other requirements in the proposed rule, we anticipate that those costs will be offset by the revisions streamlining and clarifying the application and decision-making process, which will save applicants and permittees time and money. Therefore, no external entities, including any small businesses, small organizations, or small governments, will experience significant economic impacts from this rule. Because we certify that, if promulgated, this proposed rule will not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) On the basis of information contained in the Regulatory Flexibility Act section above, this proposed rule would not ''significantly or uniquely'' affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, that this rule would not impose a cost of $100 million or more in any given year on local or State governments or private entities. A small government agency plan is not required. As explained above, small governments would not be affected because the proposed rule would not place additional requirements on any city, county, or other local municipalities.

(b) This proposed rule would not produce a Federal mandate on State, local, or Tribal governments or the private sector of $100 million or greater in any year; that is, this proposed rule is not a ''significant regulatory action''' under the Unfunded Mandates Reform Act. This proposed rule would impose no obligations on State, local, or Tribal governments.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this proposed rule would not have significant takings implications. This proposed rule would not pertain to ''taking'' of private property interests, nor would it directly affect private property. A takings implication assessment is not required because this proposed rule (1) would not effectively compel a property owner to suffer a physical invasion of property and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. This proposed rule would substantially advance a legitimate government interest (conservation and recovery of endangered species, threatened species, and other non-listed species of conservation concern) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this proposed rule would have significant federalism effects and have determined that a federalism summary impact statement is not required. This proposed rule pertains only to those entities voluntarily applying for a permit under section 10 of the ESA and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform (E.O. 12988)

This proposed rule would not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. This proposed rule would clarify the needs associated with development of the required documents to support an application for a permit under section 10 of the ESA.

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' and the Department of the Interior's manual at 512 DM 2, we are considering possible effects of this proposed rule on federally recognized Indian Tribes. We will continue to collaborate/coordinate with Tribes on issues related to federally listed species and their habitats, and we will provide notification of this proposed rule to federally recognized Tribes prior to publication. See Joint Secretarial Order 3206 (''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act,'' June 5, 1997).

Paperwork Reduction Act of 1995 (PRA)

This proposed rule contains existing and new information collections. All information collections require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*). We 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. The OMB has reviewed and approved the information collection requirements associated with permit applications, reports, and related information collections associated with native endangered and threatened species and assigned the OMB Control Number 1018–0094 (expires 01/31/2024).

In accordance with the PRA and its implementing regulations at 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on our proposal to revise OMB Control Number 1018–0094. This input will help us assess the impact of our information collection requirements and minimize the public's reporting burden. It will also help the public understand our information collection requirements and provide the requested data in the desired format.

As part of our continuing effort to reduce paperwork and respondent burdens, and in accordance with 5 CFR 1320.8(d)(1), we invite the public and other Federal agencies to comment on any aspect of this proposed information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our 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; 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, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of response.

Comments that you submit in response to this proposed rulemaking are a matter of public record. 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 us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The Endangered Species Act (16 U.S.C. 1531 *et seq.*) was established to provide a means to conserve the ecosystems upon which endangered and threatened species depend, to provide a program for the conservation of these endangered and threatened species, and to take the appropriate steps that are necessary to bring any endangered or threatened species to the point where measures provided for under the Act are no longer necessary. Section 10(a)(1)(A) of the ESA authorizes us to issue permits for otherwise prohibited activities in order to enhance the propagation or survival of the affected species. Section 10(a)(1)(B) of the ESA authorizes us to issue permits if the taking is incidental to the carrying out of an otherwise lawful activity. ESA section 10(d) requires that such permits be applied for in good faith and, if granted, will not operate to the disadvantage of endangered species, and will be consistent with the purposes of the Act.

All Service permit applications are tailored to a specific activity based on the requirements for specific types of permits. We collect standard identifier information for all applications for permits, such as the name of the applicant and the applicant's address, telephone numbers, if applicable, tax identification number, email address, description of activity being requested under the ESA, and, after the permit has been issued, a report (description of activity that was conducted under that permit). Standardization of general information common to the application forms makes the filing of applications easier for the public and helps to expedite our review.

The information that we collect is the minimum necessary for us to determine if the applicant/permittee meets, or continues to meet, permit issuance requirements. Respondents submit application forms periodically as needed. Submission of reports is generally on an annual basis, but for some activities (such as activities associated with sea turtles), may be on a more frequent basis, as needed (see those specific reporting forms). This information collection request includes minor modifications to the layout and content of the currently approved application forms so that they:

(a) Are easier to understand and complete,

(b) Minimize the number of completed pages the applicant must submit, and

(c) Accommodate future electronic permitting in the Service's new ePermits System.

In addition to the application forms, permit holders must submit the reports in accordance with their permits issued based on 50 CFR part 17. Some Service annual reports associated with permits are in the 3–202 series of forms, each tailored to a specific activity based on the requirements for specific types of permits. In some cases, we developed specific information collection forms to facilitate and standardize the reporting and review, and to facilitate development of electronic forms and electronic reporting and retrieval of that information.

Annual reporting of permit compliance is required in most cases under the authority of section 10(a)(1)(A) and 10(a)(1)(B) of the ESA and its implementing regulations in 50 CFR part 17. These reports allow us to evaluate the proper implementation of the conservation benefit agreement or plan, ensure take authorization has not been exceeded, formulate further research, and develop and adjust management and recovery plans for the species.

The proposed revisions to existing and new reporting and/or recordkeeping requirements identified below require approval by OMB:

(1) *(REVISED) Application—FWS Form 3–200–54, ''Enhancement of Survival Permits Associated with Conservation Benefit Agreements''*—This application can be used for a single species or multiple species. Agreements may vary widely in size, scope, structure, and complexity, and in the activities they address. We revised this application form to align with the proposed regulation revisions, which includes referencing one ''conservation benefit agreement'' instead of the two prior agreement types, adding a question asking if the applicant requests to return to baseline upon permit expiration, clarifying language regarding nonsubstantive and substantive amendments, and adding clarifying language regarding authorized agents.

(2) *(NEW) Application Amendments—Enhancement of Survival Permits (FWS Form 3–200–54)*—Permittees may request amendments to a permit, or the Service may amend a permit for just cause upon a written finding of necessity. Amendments comprise changes to the permit authorization or conditions. This includes, but is not limited to, an increase or decrease in the estimated amount of take or changes in ownership of a project. The permittee must apply for amendments to the permit by submitting a description of the modified activity and the changed impacts. These are considered substantive amendments and incur a fee. Permittees do not require a new permit if there is a change in the legal individual or business name, or in the mailing address of the permittee. A permittee is required to notify the issuing office within 10 calendar days of such change. This provision does not authorize any change in location of the conduct of the permitted activity when approval of the location is a qualifying condition of the permit.

(3) *(NEW) Permit Transfers—Enhancement of Survival Permits*—Permits issued under these regulations may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee, or in the case of a deceased permitted, the deceased permittee's legal representative and the proposed transferee. Transferring permits does not incur a fee.

(4) *(NEW) Conservation Benefit Agreement*— As part of the application process associated with Form 3–200–54, applicants must submit a conservation benefit agreement. A conservation benefit agreement must include the following:

i. *Conservation Measures*—A complete description of the conservation measure or measures, including the location of the activity or activities to be covered by the permit and their intended outcome for the covered species.

ii. *Covered Species*—The common and scientific names of the covered species for which the applicant will conduct conservation measures and may need authorization for take.

iii. *Goals and Objectives*—The measurable biological goals and objectives of the conservation measures in the agreement.

iv. *Enrollment Baseline*—The baseline condition of the property or area to be enrolled.

v. *Net Conservation Benefit*—A description of how the measures are reasonably expected to improve each covered species' existing baseline

condition on the enrolled land and result in a net conservation benefit as defined at § 17.3.

vi. *Monitoring*—The steps the applicant will take to monitor and adaptively manage to ensure the goals and objectives of the agreement are met, the responsibilities of all parties are carried out, and the agreement will be properly implemented.

vii. *Neighboring Property Owners*—A description of the enrollment process to provide neighboring property owners incidental take coverage under 50 CFR 17.22(c)(5)(ii) or 17.32(c)(5)(ii), if applicable.

viii. *Return to Baseline Condition*—The applicant's choice between including authorization to return enrolled land to baseline condition or forgoing that authorization. For applicants seeking authority to return to baseline condition, a description of steps that may be taken to return the property to baseline condition and measures to reduce the effects of the take to the covered species.

ix. *Additional Actions*—Any other measures that the Director may require as necessary or appropriate in order to meet the issuance criteria in 50 CFR 17.22(c)(2) or 17.32(c)(2) or to avoid conflicts with other Service conservation efforts.

(5) *(REVISED) Application—FWS Form 3–200–56, ''Incidental Take Permits with Conservation Plan''*—Those who believe their otherwise-lawful activities will result in the ''incidental take'' of a listed wildlife species may choose to seek a permit. The purpose of the incidental take permit is to exempt non-Federal permittees—such as States, local governments, businesses, corporations, and private landowners—from the prohibitions of section 9, not to authorize the activities that result in take. The permittee also has assurances from the FWS through the ''No Surprises'' regulation. The application form has a few revisions to be consistent with the proposed regulations, which include clarifying minor amendments and removing any language regarding implementing agreements.

(6) *(NEW)Application Amendments—Incidental Take (FWS Form 3–200–56)*—Amendments to a permit may be requested by the permittee, or the Service may amend a permit for just cause upon a written finding of necessity. Amendments comprise changes to the permit authorization or conditions. This includes, but is not limited to, an increase or decrease in the requested amount of take or changes in ownership of a project. The permittee must apply for amendments to the permit by submitting a description of the modified activity and the changed impacts. These are considered substantive amendments and incur a fee. A permittee is not required to obtain a new permit if there is a change in the legal individual or business name, or in the mailing address of the permittee. A permittee is required to notify the issuing office within 10 calendar days of such change. This provision does not authorize any change in location of the conduct of the covered activity when approval of the location is a qualifying condition of the permit.

(7) *(NEW) Permit Transfers—Incidental Take*—Permits issued under these regulations may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee, or in the case of a deceased permitted, the deceased permittee's legal representative and the proposed transferee. Transferring permits does not incur a fee.

(8) *(NEW) Conservation Plan*—As part of the application process, applicants are also required to submit a conservation plan with their completed Form 3–200–56. A conservation plan must include the following:

i. *Project Description*—A complete description of the project including purpose, location, timing, and proposed covered activities.

ii. *Covered Species*—As defined in § 17.3, common and scientific names of species sought to be covered by the permit, as well as the number of individuals to be taken and the age and sex of those individuals, if known.

iii. *Goals and Objectives*—The measurable biological goals and objectives of the conservation plan.

iv. *Anticipated Take*—Expected timing, geographic distribution, type and amount of take, and the likely impact of take on the species.

v. *Conservation Program,* which explains the:

- Conservation measures that will be taken to minimize and mitigate the impacts of the incidental take for all covered species commensurate with the taking;
- Roles and responsibilities of all entities involved in implementation of the conservation plan;
- Changed circumstances and the planned responses in an adaptive management plan; and
- Procedures for dealing with unforeseen circumstances.

vi. *Conservation Timing*—The timing of mitigation relative to the incidental take of covered species.

vii. *Permit Duration*—The rationale for the requested permit duration.

viii. *Monitoring*—Monitoring of the effectiveness of the mitigation and minimization measures, progress towards achieving the biological goals and objectives, and permit compliance.

ix. *Funding Needs and Sources*—An accounting of the costs for properly implementing the conservation plan and the sources and methods of funding.

x. *Alternative Actions*—The alternative actions to the taking the applicant considered and the reasons why such alternatives are not being used.

xi. *Additional Actions*—Other measures that the Director requires as necessary or appropriate, including those necessary or appropriate to meet the issuance criteria or other statutory responsibilities of the Service.

(9) *(REVISED) Form 3–200–59, ''Recovery Permit Application Form''*—This application form is used to apply for a permit for any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species.

The data acquired from the issuance of recovery permits is valuable to the decisions that the Service and its partners make regarding land acquisition, land management, consultations under section 7 of the ESA, recovery plans, and downlisting or delisting. Data from these federally issued permits is used on a landscape level. Without recovery permits, our basic knowledge about the abundance, stability, and resiliency of populations, habitat use and requirements, geographic ranges, and diseases of federally listed species would be much more limited. Regulations at 50 CFR 13.25(a) and (b) prohibit permit transfers for this permit type.

We revised Form 3–200–59 to fix typos, incorporate references to ePermits, and update links to the FWS website.

(10) *(REVISED) Form 3–200–60, Interstate Commerce Application Form''*—This application form is used to apply for an interstate commerce permit that allows for take otherwise prohibited by section 9 of the ESA. Interstate commerce permits authorize the purchase and sale of listed species across State lines. For wildlife, interstate commerce permits are obtained by the buyer; for plants, the seller obtains the permits. Regulations at 50 CFR 13.25(a) and (b) prohibit permit transfers for this permit type.

We revised Form 3–200–60 to fix typos, incorporate references to ePermits, update links to the FWS website, and add information in section E (question A7) to ensure that applicants provide information

necessary for the permit decision as required by regulation.

(11) (NEW) *Application Amendments (FWS Forms 3–200–59* and *3–200–60*)—Amendments to a permit may be requested by the permittee, or the Service may amend a permit for just cause upon a written finding of necessity. Amendments comprise changes to the permit authorization or conditions. This includes, but is not limited to, an increase or decrease in the estimated amount of take or changes in ownership of a project. The permittee must apply for amendments to the permit by submitting a description of the modified activity and the changed impacts. These are considered substantive amendments and incur a fee. A permittee is not required to obtain a new permit if there is a change in the legal individual or business name, or in the mailing address of the permittee. A permittee is required to notify the issuing office within 10 calendar days of such change. This provision does not authorize any change in location of the conduct of the permitted activity when approval of the location is a qualifying condition of the permit.

(12) (REVISED) *Form 3–2530, ''California/Nevada/Klamath Basin, OR, Recovery Permit Annual Summary Report Form''*—We propose to change the ''TE'' field to ''permit number'' on each page of the form.

We also propose to renew the existing information collection requirements identified below:

(1) *Annual Reports (Enhancement of Survival Permit Associated with Conservation Benefit Agreements)*—Annual reports associated with conservation benefit agreements are non-form requirements and are required by Federal permitting regulations under 50 CFR 13.45, unless otherwise specified in the permit. Reports contain information regarding the implementation of conservation measures and the amount of take that has occurred, both of which are essential to ensuring compliance with the permit. Permittees may submit the information in any format they choose.

(2) *Notifications (Incidental Take)*—Private landowners who have an enhancement of survival permit (and accompanying conservation benefit agreement) must notify us if their land management activities incidentally take a listed or candidate species covered under their permit.

(3) *Notifications (Change in Land Owner)*—We issue enhancement of survival permits to the landowners, and their name is printed on the permit. If ownership of the land changes, this permit does not automatically transfer to the new landowner. Therefore, we ask the permittee to notify us if there is a change in land ownership so that we may update the permit.

(4) *Annual Reports (Conservation Plans)*—Annual reports associated with conservation plans are non-form requirements and are required by Federal permitting regulations under 50 CFR 13.45, unless otherwise specified in the permit. Reports contain information regarding the implementation of minimization and mitigation measures and the amount of take that has occurred, both of which are essential to ensuring compliance with the permit. Permittees may submit the information in any format they choose.

(5) *Annual Reports (Recovery/Interstate Commerce)*—Annual reports associated with recovery/interstate commerce permits are non-form requirements and are required by Federal permitting regulations under 50 CFR 13.45, unless otherwise specified in the permit. Reports contain information regarding the activities conducted under the permit and the amount of take that has occurred, both of which are essential to ensuring compliance with the permit. Permittees may submit the information in any format they choose, and they may elect to use a taxa-specific form if is available

(6) *Request to Revise List of Authorized Individuals*—When a new, renewed, or amended permit is issued, the list of authorized individuals (LAI) is typically at the end of a permit on Regional Office letterhead. The LAI captures those expressly authorized to perform otherwise prohibited activities on an active permit.

When a permittee requests changes to the individuals authorized on a permit, the Field Office reviews the qualifications. It then issues an updated standalone LAI with the new and current qualified individuals. Issuance of a standalone LAI is considered an administrative change to maintain an up-to-date list of those authorized for the permit's species/activities. Since there are no revisions to the previously authorized species or geographic localities on the permit itself, the action is purely a streamlining measure for the regions to manage the high volume of personnel changes without issuing an amendment or new permit.

(7) *Notification (Escape of Wildlife)*—If a recovery or interstate commerce permit authorizes activities that include keeping wildlife in captivity, for health and safety reasons, we ask the permittee to immediately notify us if any of the captive wildlife escape.

(8) *Annual Reports Associated with Native Endangered and Threatened Species Under the ESA*—We use the following annual report forms specific to particular species for activities associated with native endangered and threatened species permits under the ESA. The Service designed the forms to facilitate the electronic reporting specifically for each species. The Service will use the reported data to evaluate the success of the permitted project, formulate further research, and develop and adjust management and recovery plans for the species. The data will also inform 5-year reviews and species status assessments conducted under the ESA.

- Form 3–202–55b, ''*U.S. Fish and Wildlife Service Geographic Area: Midwestern Bat Reporting Form*'';
- Form 3–202–55c, ''*U.S. Fish and Wildlife Service Geographic Area: Southeastern Bat Reporting Form*'';
- Form 3–202–55d, ''*U.S. Fish and Wildlife Service Geographic Area: Northeastern Bat Reporting Form*'';
- Form 3–202–55e, ''*U.S. Fish and Wildlife Service Geographic Area: Plains/Rockies Bat Reporting Form*'';
- FWS Form 3–202–55f, ''*Non-Releasable Sea Turtle Annual Report*'';
and
- FWS Form 3–202–55g, ''*Sea Turtle Rehabilitation*''.

We also utilize the following seven new reporting forms associated with the recovery/interstate commerce portion of this information collection:

- Form 3–2523, ''Midwest Geographic Area: Freshwater Mussel Reporting Form'';
- Form 3–2526, ''Midwest Geographic Area: Bumble Bee Reporting Form'';
- Form 3–2530, ''California/Nevada/Klamath Basin, OR, Recovery Permit Annual Summary Report Form'';
- Form 3–2532, ''U.S. Fish and Wildlife Service Geographic Area: Alaska Bat Reporting Form'';
- Form 3–2533, ''U.S. Fish and Wildlife Service Geographic Area: Northwestern Bat Reporting Form''; and
- Form 3–2534, ''U.S. Fish and Wildlife Service Geographic Area: Western Bat Reporting Form''.

Copies of the draft forms are available to the public by submitting a request to the Service Information Collection Clearance Officer using one of the methods identified in **ADDRESSES.**

Title of Collection: Federal Fish and Wildlife Permit Applications and Reports—Native Endangered and Threatened Species; 50 CFR parts 10, 13, and 17.

OMB Control Number: 1018–0094.

Form Numbers: FWS Forms 3–200–54, 3–200–56, 3–200–59, 3–200–60, 3–202–55a through 3–202–55g, 3–2523, 3–2526, 3–2530, and 3–2532 through 3–2534.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals; private sector; and State/local/Tribal governments.

Total Estimated Number of Annual Respondents: 5,380.

Total Estimated Number of Annual Responses: 5,380.

Estimated Completion Time per Response: Varies from 30 minutes to 2,080 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 220,660.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for applications; annually or on occasion for reports and notifications.

Total Estimated Annual Nonhour Burden Cost: $19,415,460 (primarily associated with application processing and administrative fees).

Send your written comments and suggestions on this information collection by the date indicated in **DATES** to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0094 in the subject line of your comments.

National Environmental Policy Act

We are analyzing this proposed regulation in accordance with the criteria of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), the Department of the Interior regulations on Implementation of NEPA (43 CFR 46.10–46.450), and the Department of the Interior Manual (516 DM 8).

We anticipate that the categorical exclusion found at 43 CFR 46.210(i) likely applies to the proposed regulation changes. At 43 CFR 46.210(i), the Department of the Interior has found that the following categories of actions would not individually or cumulatively have a significant effect on the human environment and are, therefore, categorically excluded from the requirement for completion of an environmental assessment or environmental impact statement: Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case. When the Service processes an application for an enhancement of survival permit or incidental take permit, the decision is subject to the NEPA process at that time. We invite the public to comment on the extent to which this proposed rule may have a significant impact on the human environment or fall within one of the categorical exclusions for actions that have no individual or cumulative effect on the quality of the human environment. We will complete our analysis, in compliance with NEPA, before finalizing these proposed regulations.

Energy Supply, Distribution or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. The proposed revised regulations are not expected to affect energy supplies, distribution, or use. Therefore, this action is a not a significant energy action, and no statement of energy effects is required.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

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

(3) Use clear language rather than jargon;

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

(5) Use lists and tables wherever possible.

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

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, we propose to amend parts 13 and 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 13—GENERAL PERMIT PROCEDURES

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

Authority: 16 U.S.C. 668a, 704, 712, 742j–l, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374, 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

Subpart C—Permit Administration

■ 2. Amend § 13.23 by revising the section heading and paragraph (b) to read as follows:

§ 13.23 Amendments of permits.

* * * * *

(b) *Service amendment.* The Service reserves the right to amend any permit for just cause at any time during its term, upon written finding of necessity, provided that the amendment of a permit issued under § 17.22(b) or (c) or § 17.32(b) or (c) of this subchapter will be consistent with the requirements of § 17.22(b)(5) and (c)(5) or § 17.32(b)(5) and (c)(5) of this subchapter, respectively.

* * * * *

■ 3. Amend § 13.24 by revising the section heading and paragraph (c) introductory text to read as follows:

§ 13.24 Rights of succession by certain persons.

* * * * *

(c) In the case of permits issued under the regulations in this subchapter in § 17.22(b) and (c), § 17.32(b) and (c), or 50 CFR part 22, the successor's authorization under the permit is also subject to our determination that:

* * * * *

■ 4. Amend § 13.25 by revising paragraphs (b) and (c) and the introductory text of paragraph (e) to read as follows:

§ 13.25 Transfer of permits and scope of permit authorization.

* * * * *

(b) Permits issued under the regulations in this subchapter in § 17.22(b) and (c), § 17.32(b) and (c), or 50 CFR part 22 may be transferred to a successor subject to our determination that the proposed transferee:

(1) Meets all of the qualifications under this part for holding a permit;

(2) Has provided adequate written assurances of sufficient funding for the conservation measures, conservation plan, or conservation benefit agreement,

and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(3) Has provided other information that we determine is relevant to the processing of the submission.

(c) In the case of the transfer of lands subject to an agreement and permit issued under § 17.22(c) or § 17.32(c) of this subchapter, the Service will transfer the permit to the new owner if the new owner agrees in writing to become a party to the original agreement and permit.

* * * * *

(e) In the case of permits issued under § 17.22(b) and (c) or § 17.32(b) and (c) of this subchapter to a State, Tribal, or local government entity, a person is under the direct control of the permittee where:

* * * * *

■ 5. Amend § 13.28 by revising paragraph (a)(5) to read as follows:

§ 13.28 Permit revocation.

(a) * * *

(5) Except for permits issued under § 17.22(b) and (c) or § 17.32(b) and (c) of this subchapter, the population(s) of the wildlife or plant that is the subject of the permit declines to the extent that continuation of the permitted activity would be detrimental to maintenance or recovery of the affected population.

* * * * *

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 6. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

Subpart A—Introduction and General Provisions

■ 7. Amend § 17.2 by:

■ a. Revising paragraph (a);

■ b. Redesignating paragraphs (b) through (e) as paragraphs (c) through (f); and

■ c. Adding a new paragraph (b).

The revision and addition read as follows:

§ 17.2 Scope of regulations.

(a) The regulations of this part apply only to endangered and threatened wildlife and plants, except for § 17.22(b) and (c) and § 17.32(b) and (c), which may apply to wildlife and plant species that are not listed as endangered or threatened if they meet the definition of ''covered species.''

(b) Permits authorized under this part include:

(1) Scientific purposes or enhancement of propagation or survival permits for take associated with research, captive propagation programs, or conservation activities to enhance and recover populations of covered species; and

(2) Incidental take permits for take that is incidental to otherwise lawful activities.

* * * * *

■ 8. Amend § 17.3 by:

■ a. Revising the definition for ''Adequately covered'';

■ b. Adding in alphabetical order definitions for ''Applicant'' and ''Baseline condition'';

■ c. Revising the definition for ''Changed circumstances'';

■ d. Adding in alphabetical order definitions for ''Covered activity'', ''Covered species'', ''Net conservation benefit'', ''Permit area'', ''Permittee'', ''Plan area'', ''Programmatic permit associated with a conservation benefit agreement'', ''Programmatic permit associated with a conservation plan'', and

■ e. Revising the definition for ''Property owner''.

The revisions and additions read as follows:

§ 17.3 Definitions.

* * * * *

Adequately covered means, with respect to species listed pursuant to section 4 of the Act, that a proposed conservation plan has satisfied the permit issuance criteria under section 10(a)(2)(B) of the Act for the species covered by the plan, and, with respect to non-listed species, that a proposed conservation plan has satisfied the permit issuance criteria under section 10(a)(2)(B) of the Act that would apply if the non-listed species covered by the plan were listed. For the Service to cover a species under a conservation plan, it must be identified as a covered species on the section 10(a)(1)(B) permit.

* * * * *

Applicant means the person(s), as defined at § 10.12 of this subchapter, who is named and identified on the application and, by signing the application, will assume the responsibility for implementing the terms of an issued permit. Other parties including, without limitations, affiliates, associates, subsidiaries, corporate families, and assigns of an applicant are not applicants or permittees unless, in accordance with applicable regulations, an application or permit has been amended to include them or unless a permit has been transferred.

* * * * *

Baseline condition means population estimates and distribution or habitat characteristics on the enrolled land that could sustain seasonal or permanent use by the covered species at the time a conservation benefit agreement is executed by the Service and the property owner, or by a programmatic permit holder and the property owner, under §§ 17.22(c) and 17.32(c) of this part, as applicable.

* * * * *

Changed circumstances are changes in circumstances affecting a species or geographic area covered by a conservation plan that can reasonably be anticipated by the plan's developers and the Service for which responses can be identified in a conservation plan (*e.g.,* the listing of new species, or a fire or other natural catastrophic event in areas prone to those events).

* * * * *

Covered activity means an action that causes take of a covered species and for which take is authorized by a permit under § 17.22(b) and (c) or § 17.32(b) and (c), as applicable.

Covered species means any species that are included in a conservation plan or conservation benefit agreement and for which take is authorized through an incidental take or enhancement of survival permit. Covered species include species listed as endangered or threatened for which take is reasonably certain to occur. Covered species may include species that are proposed or candidates for listing, that have other Federal protective status, or that the Service determines have a reasonable potential to be considered for listing during the permit's duration. An incidental take or enhancement of survival permit need not include a listed species.

* * * * *

Net conservation benefit means the cumulative benefit provided by specific measures described in a conservation benefit agreement that are designed to improve the existing baseline condition of a covered species by reducing or eliminating threats or otherwise improving the status of covered species, minus the adverse impacts to covered species from ongoing land or water use activities and conservation measures, so that the condition of the covered species or the amount or quality of its habitat is reasonably expected to be greater at the end of the agreement period than at the beginning.

* * * * *

Permit area means the geographic area where the take permit applies. The permit area must be delineated in the

permit and be included within a conservation plan or agreement.

Permittee means the named applicant who has been issued a permit and who assumes responsibility for implementing the permit. Other parties including, without limitation, affiliates, associates, subsidiaries, corporate families, and assigns of a permittee are not permittees unless the permit has been amended or transferred pursuant to applicable regulations.

Plan area means the geographic area where covered activities, including mitigation, described in the conservation plan associated with an incidental take permit may occur. The plan area must be identified in the conservation plan.

* * * * *

Programmatic permit associated with a conservation benefit agreement means an enhancement of survival permit issued under § 17.22(c) or § 17.32(c), with an accompanying conservation benefit agreement that allows at least one named permittee to extend the incidental take authorization to enrolled property owners who are capable of carrying out and agree to properly implement the conservation benefit agreement.

Programmatic permit associated with a conservation plan means an incidental take permit issued under § 17.22(b) or § 17.32(b), with an accompanying conservation plan that allows at least one named permittee to extend the incidental take authorization to participants who are capable of carrying out and agree to properly implement the conservation plan.

* * * * *

Property owner, with respect to conservation benefit agreements and plans outlined under § 17.22(b) and (c) and § 17.32(b) and (c), means a person or other entity with a property interest (including owners of water or other natural resources) sufficient to carry out the proposed activities, subject to applicable State and Federal laws and regulations.

* * * * *

Subpart C—Endangered Wildlife

■ 9. Amend § 17.22 by:

■ a. Revising the section heading and paragraphs (b), (c), and (d); and

■ b. Removing paragraph (e).

The revisions read as follows:

§ 17.22 Permits for endangered species.

* * * * *

(b)(1) *Application requirements for an incidental take permit.* A person seeking authorization for incidental take that would otherwise be prohibited by § 17.21(c) submits Form 3–200–56, a processing fee (if applicable), and a conservation plan. The Service will process the application when the Director determines the application is complete. A conservation plan must include the following:

(i) *Project description:* A complete description of the project including purpose, location, timing, and proposed covered activities.

(ii) *Covered species:* As defined in § 17.3, common and scientific names of species sought to be covered by the permit, as well as the number of individuals to be taken and the age and sex of those individuals, if known.

(iii) *Goals and objectives:* The measurable biological goals and objectives of the conservation plan.

(iv) *Anticipated take:* Expected timing, geographic distribution, type and amount of take, and the likely impact of take on the species.

(v) Conservation program, which explains the:

(A) Conservation measures that will be taken to minimize and mitigate the impacts of the incidental take for all covered species commensurate with the taking;

(B) Roles and responsibilities of all entities involved in implementation of the conservation plan;

(C) Changed circumstances and the planned responses in an adaptive management plan; and

(D) Procedures for dealing with unforeseen circumstances.

(vi) *Conservation timing:* The timing of mitigation relative to the incidental take of covered species.

(vii) *Permit duration:* The rationale for the requested permit duration.

(viii) *Monitoring:* Monitoring of the effectiveness of the mitigation and minimization measures, progress towards achieving the biological goals and objectives, and permit compliance.

(ix) *Funding needs and sources:* An accounting of the costs for properly implementing the conservation plan and the sources and methods of funding.

(x) *Alternative actions:* The alternative actions to the taking the applicant considered and the reasons why such alternatives are not being used.

(xi) *Additional actions:* Other measures that the Director requires as necessary or appropriate, including those necessary or appropriate to meet the issuance criteria or other statutory responsibilities of the Service.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether a permit should be issued. The Director will consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4). In making a decision, the Director will consider the anticipated duration and geographic scope of the applicant's planned activities, including the amount of covered species' habitat that is involved and the degree to which covered species and their habitats are affected. The Director will issue the permit if the Director finds:

(i) The taking will be incidental to, and not the purpose of, carrying out an otherwise lawful activity.

(ii) The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking.

(iii) The applicant will ensure that adequate funding for the conservation plan implementation will be provided.

(iv) The applicant has provided procedures to deal with unforeseen circumstances.

(v) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

(vi) The measures and conditions, if any, required under paragraph (b)(1)(xi) of this section will be met.

(vii) The applicant has provided any other assurances the Director requires to ensure that the conservation plan will be implemented.

(3) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (b) will contain terms and conditions that the Director deems necessary or appropriate to carry out the purposes of the permit and the conservation plan including, but not limited to, additional conservation measures, specified deadlines, and monitoring and reporting requirements deemed necessary for determining whether the permittee is complying with those terms and conditions. The Director will rely upon existing reporting requirements to the maximum extent practicable.

(4) *Permit duration and effective date.* In determining the duration of a permit, the Director will consider the duration of the activities for which coverage is requested; the time necessary to fully minimize and mitigate the impacts of the taking; and uncertainties related to the impacts of the taking, success of the mitigation, and external factors that could affect the success of the conservation plan.

(i) Permits issued under this paragraph (b) become effective for listed covered species upon the date the permittee signs the incidental take permit, which must occur within 90 calendar days of issuance. For non-listed covered species, the permit's take authorization becomes effective upon

the effective date of the species listing provided the permittee signed the permit within 90 calendar days of issuance and has properly implemented the conservation plan.

(ii) The permit expires on the date indicated on the face of the permit.

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (b)(5) apply only to incidental take permits issued in accordance with paragraph (b)(2) of this section where the conservation plan is being properly implemented and the permittee is properly complying with the incidental take permit. The assurances apply only with respect to species covered by the conservation plan. These assurances do not apply to Federal agencies or to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998, remain in effect, and those permits will not be revised.

(6) *Additional actions.* Nothing in this section will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity from taking additional actions at its own expense to protect or conserve a species included in a conservation plan.

(7) *Permit amendment or renewal.* Any amendment or renewal of an existing permit issued under this part is a new agency decision and is therefore subject to all current relevant laws and regulations. The application will be evaluated based on the current policies and guidance in effect at the time of the amendment or renewal decision. Evaluation of an amendment extends only to the portion(s) of the conservation plan, conservation benefit agreement, or permit for the which the amendment is requested. Amendment or renewal applications must meet issuance criteria based upon the best available commercial and scientific data at the time of the permit decision.

(8) *Discontinuance of permit activity.* Notwithstanding the provisions of § 13.26 of this subchapter, a permittee under this paragraph (b) remains responsible for any outstanding minimization and mitigation measures required under the terms of the permit for take that occurs prior to surrender of the permit and such minimization and mitigation measures as may be required pursuant to the termination provisions of an implementing agreement, habitat conservation plan, or permit even after surrendering the permit to the Service pursuant to § 13.26 of this subchapter. The Service will deem the permit canceled only upon a determination that such minimization and mitigation measures have been implemented. Upon surrender of the permit, the permittee will be authorized no further take under the terms of the surrendered permit.

(9) *Criteria for revocation.* A permit issued under this paragraph (b) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv) and the inconsistency has not been remedied.

(c)(1) *Application requirements for an enhancement of survival permit associated with conservation benefit agreements.* The applicant must submit Form 3–200–54, the processing fee (if applicable), and a conservation benefit agreement. The Service will process the application when the Director determines the application has met all statutory and regulatory requirements for a complete application. A conservation benefit agreement must include the following:

(i) *Conservation measures:* A complete description of the conservation measure or measures, including the location of the activity or activities to be covered by the permit and their intended outcome for the covered species.

(ii) *Covered species:* The common and scientific names of the covered species for which the applicant will conduct conservation measures and may need authorization for take.

(iii) *Goals and objectives:* The measurable biological goals and objectives of the conservation measures in the agreement.

(iv) *Enrollment baseline:* The baseline condition of the property or area to be enrolled.

(v) *Net conservation benefit:* A description of how the measures are reasonably expected to improve each covered species' existing baseline condition on the enrolled land and result in a net conservation benefit as defined at § 17.3.

(vi) *Monitoring:* The steps the applicant will take to monitor and adaptively manage to ensure the goals and objectives of the conservation benefit agreement are met, the responsibilities of all parties are carried out, and the conservation benefit agreement will be properly implemented.

(vii) *Neighboring property owners:* A description of the enrollment process to provide neighboring property owners incidental take coverage under paragraph (c)(5)(ii) of this section, if applicable, or any other measures developed to protect the interests of neighboring property owners.

(viii) *Return to baseline condition:* The applicant's choice between including authorization to return enrolled land to baseline condition or forgoing that authorization. For applicants seeking authority to return to baseline condition, a description of steps that may be taken to return the property to baseline condition and measures to reduce the effects of the take to the covered species.

(ix) *Additional actions:* Any other measures that the Director may require as necessary or appropriate in order to meet the issuance criteria in paragraph (c)(2) of this section or to avoid conflicts with other Service conservation efforts.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether to issue a permit. The Director will consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), and may issue the permit if the Director finds:

(i) The take will be incidental to an otherwise lawful activity or purposeful if it is necessary for the implementation of the conservation benefit agreement and will be in accordance with the terms of the conservation benefit agreement.

(ii) The implementation of the terms of the conservation benefit agreement is reasonably expected to provide a net conservation benefit to the affected covered species on the enrolled land that is included in the permit and for each individual property within a programmatic conservation benefit agreement, based upon: condition of the species or habitat, effects of conservation measures, and anticipated impacts of any permitted take.

(iii) The direct and indirect effects of any authorized take are unlikely to appreciably reduce the likelihood of survival and recovery in the wild of any listed species.

(iv) Implementation of the terms of the conservation benefit agreement will not conflict with any ongoing conservation or recovery programs for the covered species included in the permit or non-covered listed species.

(v) The applicant has shown capability of and commitment to implementing all of the terms of the conservation benefit agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (c) is subject to the following special conditions:

(i) The participating property owner must notify the Service of any transfer of lands subject to a conservation benefit agreement, at least 30 calendar days prior to the transfer.

(ii) The permittee must give the Service reasonable advance notice (generally at least 30 calendar days) of when take of any covered species is expected to occur, to provide the Service an opportunity to relocate affected individuals of the species, if possible and appropriate.

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the conservation benefit agreement.

(4) *Permit duration and effective date.* The duration of permits issued under paragraph (c) of this section must be sufficient to provide a net conservation benefit to species covered in the enhancement of survival permit on the enrolled land.

(i) In determining the duration of a permit, the Director will consider the duration of the planned activities, the uncertainties related to the impacts of the taking, and the positive and negative effects of the planned activities covered by the permit on species covered by the conservation benefit agreement.

(ii) Permits issued under this paragraph (c) become effective for listed covered species upon the date the permittee signs the enhancement of survival permit, which must be within 90 calendar days of issuance. For non-listed covered species, the take authorized through the permit becomes effective upon the effective date of the species listing provided the permittee signed the permit within 90 calendar days of issuance and has properly implemented the conservation benefit agreement since signing the permit.

(5) *Assurances.* The assurances in paragraph (c)(5)(ii) of this section apply only to enhancement of survival permits issued in accordance with paragraph (c)(2) of this section where the conservation benefit agreement is being properly implemented, apply only with respect to species covered by the permit, and are effective until the permit expires. The assurances provided in this section apply only to enhancement of survival permits issued after July 19, 1999.

(i) *Permittee and participating property owners.* The Director and the permittee may agree to revise or modify the conservation measures set forth in a conservation benefit agreement if the Director determines that those revisions or modifications do not change the Director's prior determination that the conservation benefit agreement is reasonably expected to provide a net conservation benefit to the covered species. However, the Director may not require additional or different conservation measures to be undertaken by a permittee without the consent of the permittee.

(ii) *Neighboring property owners.* The Director may provide incidental take coverage in the enhancement of survival permit for owners of properties adjacent to properties covered by the conservation benefit agreement through enrollment procedures contained in the agreement. The method of providing incidental take coverage will be tailored to the specific conservation benefit agreement and needs of adjacent property owners. One method is to have the neighboring property owner sign a certificate that applies the authorization and assurances in the permit to the neighboring property owner. The certificate must:

(A) Establish a baseline condition for the covered species on their property; and

(B) Give permission to the Service, the permittee, or a representative of either to enter the property, with reasonable notice, to capture and relocate, salvage, or implement measures to reduce anticipated take of the covered species.

(6) *Additional actions.* Nothing in this section will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity from taking additional actions at its own expense to protect or conserve a species included in a conservation benefit agreement.

(7) *Permit amendment or renewal.* Any amendment or renewal of an existing permit issued under part 17 of this chapter is a new agency decision and is therefore subject to all current relevant laws and regulations. The application will be evaluated based on the current policies and guidance in effect at the time of the amendment or renewal decision. Evaluation of an amendment extends only to the portion(s) of the conservation benefit agreement or permit for which the amendment is requested. Amendment or renewal applications must meet issuance criteria based upon the best available commercial and scientific data at the time of the permit decision.

(8) *Discontinuance of permit activity.* Notwithstanding the provisions of § 13.26 of this subchapter, a permittee under this paragraph (c) remains responsible for any outstanding conservation measures required under the terms of the permit for take that occurs prior to surrender of the permit and any conservation measures required pursuant to the termination provisions of the conservation benefit agreement or permit even after surrendering the permit to the Service pursuant to § 13.26 of this subchapter.

(i) The permittee of a programmatic conservation benefit agreement that conveys take authorization and assurances to participants or enrollees must follow the provisions of § 13.26 of this subchapter.

(ii) The permit will be deemed canceled only upon a determination by the Service that those conservation measure(s) have been implemented and the permittee has had ample time to return the permittee's property to baseline condition, if the permit authorized incidental take associated with return to baseline and if the permittee chooses to exercise that authorization. Upon surrender of the permit, no further take will be authorized under the terms of the surrendered permit, and the assurances in paragraph (c)(5)(i) of this section will no longer apply.

(9) *Criteria for revocation.* The Director may not revoke a permit issued under paragraph (c) of this section except as provided in this paragraph (c)(9).

(i) The Director may revoke a permit for any reason set forth in § 13.28(a)(1) through (4) of this subchapter. The Director may revoke a permit if continuation of the covered activity would either:

(A) Appreciably reduce the likelihood of survival and recovery in the wild of any covered species; or

(B) Directly or indirectly alter designated critical habitat such that the value of that critical habitat is appreciably diminished for both the survival and recovery of a covered species.

(ii) Before revoking a permit for either of the reasons set forth in paragraph (c)(9)(i)(A) or (B) of this section, the Director, with the consent of the permittee, will pursue all appropriate options to avoid permit revocation. These options may include, but are not limited to, extending or modifying the existing permit, capturing and relocating the species, compensating the property owner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging for a third-party acquisition of an interest in the property.

(d) *Objection to permit issuance.* (1) In regard to any notice of a permit application published in the **Federal Register**, any interested party that objects to the issuance of a permit, in whole or in part, may, during the comment period specified in the notice, request notification of the final action to

be taken on the application. A separate written request must be made for each permit application. Such a request must specify the Service's permit application number and state the reasons why the interested party believes the applicant does not meet the issuance criteria contained in § 13.21 of this subchapter and this section or other reasons why the permit should not be issued.

(2) If the Service decides to issue a permit contrary to objections received pursuant to paragraph (d)(1) of this section, then the Service will, at least 10 days prior to issuance of the permit, make reasonable efforts to contact by telephone or other expedient means, any party who has made a request pursuant to paragraph (d)(1) of this section and inform that party of the issuance of the permit. However, the Service may reduce the time period or dispense with such notice if the Service determines that time is of the essence and that delay in issuance of the permit would:

(i) Harm the specimen or population involved; or

(ii) Unduly hinder the actions authorized under the permit.

(3) The Service will notify any party filing an objection and request for notice under paragraph (d)(1) of this section of the final action taken on the application, in writing. If the Service has reduced or dispensed with the notice period referred to in paragraph (d)(2) of this section, the Service will include its reasons in such written notice.

Subpart D—Threatened Wildlife

■ 10. Amend § 17.32 by:

■ a. Revising the section heading and paragraphs (b) and (c); and

■ b. Removing paragraph (d).

The revisions read as follows:

§ 17.32 Permits for threatened species.

* * * * *

(b)(1) *Application requirements for an incidental take permit.* A person seeking authorization for incidental take that would otherwise be prohibited by § 17.31 or §§ 17.40 through 17.48 submits Form 3–200–56, a processing fee (if applicable), and a conservation plan. The Service will process the application when the Director determines the application is complete. A conservation plan must include the following:

(i) *Project description:* A complete description of the project, including purpose, location, timing, and proposed covered activities.

(ii) *Covered species:* Common and scientific names of species sought to be covered by the permit, as defined in § 17.3, as well as the number of individuals to be taken and the age and sex of those individuals, if known.

(iii) *Goals and objectives:* The measurable biological goals and objectives of the conservation plan.

(iv) *Anticipated take:* Expected timing, geographic distribution, type and amount of take, and the likely impact of take on the species.

(v) Conservation program, which explains the:

(A) Conservation measures that will be taken to minimize and mitigate the impacts of the incidental take for all covered species commensurate with the taking;

(B) Roles and responsibilities of all entities involved in implementation of the conservation plan;

(C) Changed circumstances and the planned responses in an adaptive management plan; and

(D) Procedures for dealing with unforeseen circumstances.

(vi) *Conservation timing:* The timing of mitigation relative to the incidental take of covered species.

(vii) *Permit duration:* The rationale for the requested permit duration.

(viii) *Monitoring:* Monitoring of the effectiveness of the mitigation and minimization measures, progress towards achieving the biological goals and objectives, and permit compliance.

(ix) *Funding needs and sources:* An accounting of the costs for properly implementing the conservation plan and the sources and methods of funding.

(x) *Alternative actions:* The alternative actions to the taking the applicant considered and the reasons why such alternatives are not being used.

(xi) *Additional actions:* Other measures that the Director requires as necessary or appropriate, including those necessary or appropriate to meet the issuance criteria or other statutory responsibilities of the Service.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether a permit should be issued. The Director will consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4). The Director will also consider the anticipated duration and geographic scope of the applicant's planned activities, including the amount of covered species' habitat that is involved and the degree to which covered species and their habitats are affected. The Director will issue the permit if the Director finds:

(i) The taking will be incidental to, and not the purpose of, carrying out an otherwise lawful activity.

(ii) The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking.

(iii) The applicant will ensure that adequate funding for the conservation plan implementation will be provided.

(iv) The applicant has provided procedures to deal with unforeseen circumstances.

(v) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

(vi) The measures and conditions, if any, required under paragraph (b)(1)(xi) of this section will be met.

(vii) The applicant has provided any other assurances the Director requires to ensure that the conservation plan will be implemented.

(3) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this paragraph will contain terms and conditions that the Director deems necessary or appropriate to carry out the purposes of the permit and the conservation plan, including, but not limited to, additional conservation measures, specified deadlines, and monitoring and reporting requirements deemed necessary for determining whether the permittee is complying with those terms and conditions. The Director will rely upon existing reporting requirements to the maximum extent practicable.

(4) *Permit duration and effective date.* In determining the duration of a permit, the Director will consider the duration of the activities for which coverage is requested; the time necessary to fully minimize and mitigate the impacts of the taking; and uncertainties related to the impacts of the taking, success of the mitigation, and external factors that could affect the success of the conservation plan.

(i) Permits issued under this paragraph (b) become effective for listed covered species upon the date the permittee signs the incidental take permit, which must occur within 90 calendar days of issuance. For non-listed covered species, the permit's take authorization becomes effective upon the effective date of the species listing provided the permittee signed the permit within 90 calendar days of issuance and has properly implemented the conservation plan.

(ii) The permit expires on the date indicated on the face of the permit.

(5) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (b)(5) apply only to incidental take permits issued in accordance with paragraph (b)(2) of this section where the conservation plan is being properly

implemented and the permittee is properly complying with the incidental take permit. The assurances apply only with respect to species covered by the conservation plan. These assurances do not apply to Federal agencies or to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998, remain in effect, and those permits will not be revised.

(6) *Additional actions.* Nothing in this section will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity from taking additional actions at its own expense to protect or conserve a species included in a conservation plan.

(7) *Permit amendment or renewal.* Any amendment or renewal of an existing permit issued under this part is a new agency decision and is therefore subject to all current relevant laws and regulations. The application will be evaluated based on the current policy and guidance in effect at the time of the amendment or renewal decision. Amendment or renewal applications must meet issuance criteria based upon the best available commercial and scientific data at the time of the permit decision.

(8) *Discontinuance of permit activity.* Notwithstanding the provisions of § 13.26 of this subchapter, a permittee under this paragraph (b) remains responsible for any outstanding minimization and mitigation measures required under the terms of the permit for take that occurs prior to surrender of the permit and such minimization and mitigation measures as may be required pursuant to the termination provisions of an implementing agreement, habitat conservation plan, or permit even after surrendering the permit to the Service pursuant to § 13.26 of this subchapter.

(i) The Service will deem the permit canceled only upon a determination that such minimization and mitigation measures have been implemented.

(ii) Upon surrender of the permit, the permittee will be authorized no further take under the terms of the surrendered permit.

(9) *Criteria for revocation.* A permit issued under this paragraph (b) may not be revoked for any reason except those set forth in § 13.28(a)(1) through (4) of this subchapter or unless continuation of the permitted activity would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv) and the inconsistency has not been remedied.

(c)(1) *Application requirements for an enhancement of survival permit associated with conservation benefit agreements.* The applicant must submit Form 3–200–54, a processing fee (if applicable), and a conservation benefit agreement. The Service will process the application when the Director determines the application has met all statutory and regulatory requirements for a complete application. A conservation benefit agreement must include the following:

(i) *Conservation measures:* A complete description of the conservation measure or measures, including the location of the activity or activities to be covered by the permit, and their intended outcome for the covered species.

(ii) *Covered species:* The common and scientific names of the covered species for which the applicant will conduct conservation measures and may need authorization for take.

(iii) *Goals and objectives:* The measurable biological goals and objectives of the conservation measures in the agreement.

(iv) *Enrollment baseline:* The baseline condition of the property or area to be enrolled.

(v) *Net conservation benefit:* A description of how the measures are reasonably expected to improve each covered species' existing baseline condition on the enrolled land and result in a net conservation benefit as defined at § 17.3.

(vi) *Monitoring:* The steps the applicant will take to monitor and adaptively manage to ensure the goals and objectives of the agreement are met, the responsibilities of all parties are carried out, and the agreement will be properly implemented.

(vii) *Neighboring property owners:* A description of the enrollment process to provide neighboring property owners incidental take coverage under paragraph (c)(5)(ii) of this section, if applicable, or any other measures developed to protect the interests of neighboring property owners.

(viii) *Return to baseline condition:* The applicant's choice between including authorization to return enrolled land to baseline condition or forgoing that authorization. For applicants seeking authority to return to baseline condition, a description of steps that may be taken to return the property to baseline condition and measures to reduce the effects of the take to the covered species.

(ix) *Additional actions:* Any other measures that the Director may require as necessary or appropriate in order to meet the issuance criteria in paragraph (c)(2) of this section or to avoid conflicts with other Service conservation efforts.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether to issue a permit. The Director will consider the general issuance criteria in § 13.21(b) of this subchapter, except for § 13.21(b)(4), and may issue the permit if the Director finds:

(i) The take will be incidental to an otherwise lawful activity or purposeful if it is necessary for the implementation of the conservation benefit agreement and will be in accordance with the terms of the conservation benefit agreement.

(ii) The implementation of the terms of the conservation benefit agreement is reasonably expected to provide a net conservation benefit to the affected covered species on the enrolled land that is included in the permit and for each individual property within a programmatic conservation benefit agreement, based upon: condition of the species or habitat, effects of conservation measures, and anticipated impacts of any permitted take.

(iii) The direct and indirect effects of any authorized take are unlikely to appreciably reduce the likelihood of survival and recovery in the wild of any listed species.

(iv) Implementation of the terms of the conservation benefit agreement will not conflict with any ongoing conservation or recovery programs for listed species and the covered species included in the permit.

(v) The applicant has shown a capability for and commitment to implementing all of the terms of the conservation benefit agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (c) is subject to the following special conditions:

(i) The participating property owner must notify the Service of any transfer of lands subject to a conservation benefit agreement, at least 30 calendar days prior to the transfer.

(ii) The permittee must give the Service reasonable advance notice (generally at least 30 calendar days) of when take of any covered species is expected to occur, to provide the Service an opportunity to relocate affected individuals of the species, if possible and appropriate.

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the conservation benefit agreement.

(4) *Permit duration and effective date.* The duration of permits issued under

paragraph (c) of this section must be sufficient to provide a net conservation benefit to species covered in the enhancement of survival permit on the enrolled land.

(i) In determining the duration of a permit, the Director will consider the duration of the planned activities, the uncertainties related to the impacts of the taking, and the positive and negative effects of the planned activities covered by the permit on species covered by the conservation benefit agreement.

(ii) Permits issued under this paragraph (c) become effective for listed covered species upon the date the permittee signs the enhancement of survival permit, which must be within 90 calendar days of issuance. For non-listed covered species, the take authorized through the permit becomes effective upon the effective date of the species listing provided the permittee signed the permit within 90 calendar days of issuance and has properly implemented the conservation benefit agreement since signing the permit.

(5) *Assurances.* The assurances in paragraph (c)(5)(ii) of this section apply only to enhancement of survival permits issued in accordance with paragraph (c)(2) of this section where the conservation benefit agreement is being properly implemented, apply only with respect to species covered by the permit, and are effective until the permit expires. The assurances provided in this section apply only to enhancement of survival permits issued after July 19, 1999.

(i) *Permittee and participating property owners.* The Director and the permittee may agree to revise or modify the conservation measures set forth in a conservation benefit agreement if the Director determines that those revisions or modifications do not change the Director's prior determination that the conservation benefit agreement is reasonably expected to provide a net conservation benefit to the covered species. However, the Director may not require additional or different conservation measures to be undertaken by a permittee without the consent of the permittee.

(ii) *Neighboring property owners.* The Director may provide incidental take coverage in the enhancement of survival permit for owners of properties adjacent to properties covered by the conservation benefit agreement through enrollment procedures contained in the agreement. The method of providing incidental take coverage will be tailored to the specific conservation benefit agreement and needs of adjacent property owners. One method is to have the neighboring property owner sign a certificate that applies the authorization and assurances in the permit to the neighboring property owner. The certificate must:

(A) Establish a baseline condition for the covered species on their property; and

(B) Give permission to the Service, the permittee, or a representative of either to enter the property, with reasonable notice, to capture and relocate, salvage, or implement measures to reduce anticipated take of the covered species.

(6) *Additional actions.* Nothing in this section will be construed to limit or constrain the Director, any Federal, State, local, or Tribal government agency, or a private entity from taking additional actions at its own expense to protect or conserve a species included in a conservation benefit agreement.

(7) *Permit amendment or renewal.* Any amendment or renewal of an existing permit issued under this part is a new agency decision and is therefore subject to all current relevant laws and regulations. The application will be evaluated based on the current policy and guidance in effect at the time of the amendment or renewal decision. Amendment or renewal applications must meet issuance criteria based upon the best available commercial and scientific data at the time of the permit decision.

(8) *Discontinuance of permit activity.* Notwithstanding the provisions of § 13.26 of this subchapter, a permittee under this paragraph (c) remains responsible for any outstanding conservation measures required under the terms of the permit for take that occurs prior to surrender of the permit and any conservation measures required pursuant to the termination provisions of the conservation benefit agreement or permit even after surrendering the permit to the Service pursuant to § 13.26 of this subchapter. The permittee of a programmatic conservation benefit agreement that conveys take authorization and assurances to participants or enrollees must follow the provisions of § 13.26 of this subchapter.

(i) The permit will be deemed canceled only upon a determination by the Service that those conservation measure(s) have been implemented and the permittee has had ample time to return their property to baseline condition, if the permit authorized incidental take associated with return to baseline and if the permittee chooses to exercise that authorization.

(ii) Upon surrender of the permit, no further take will be authorized under the terms of the surrendered permit, and the assurances in paragraph (c)(5)(i) of this section will no longer apply.

(9) *Criteria for revocation.* The Director may not revoke a permit issued under this paragraph (c) except as provided in this paragraph (c)(9). The Director may revoke a permit for any reason set forth in § 13.28(a)(1) through (4) of this subchapter.

(i) The Director may revoke a permit if continuation of the covered activity would either:

(A) Appreciably reduce the likelihood of survival and recovery in the wild of any covered species; or

(B) Directly or indirectly alter designated critical habitat such that the value of that critical habitat is appreciably diminished for both the survival and recovery of a covered species.

(ii) Before revoking a permit for either of the reasons in paragraph (c)(9)(i)(A) or (B) of this section, the Director, with the consent of the permittee, will pursue all appropriate options to avoid permit revocation. These options may include, but are not limited to, extending or modifying the existing permit, capturing and relocating the species, compensating the property owner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging for a third-party acquisition of an interest in the property.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

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Notices

Federal Register

Vol. 88, No. 27

Thursday, February 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 AGRICULTURE

Food and Nutrition Service

Child Nutrition Programs: Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the Department's annual adjustments to the Income Eligibility Guidelines to be used in determining eligibility for free and reduced price meals and free milk for the period from July 1, 2023 through June 30, 2024. These guidelines are used by schools, institutions, and facilities participating in the National School Lunch Program (and Commodity School Program), School Breakfast Program, Special Milk Program for Children, Child and Adult Care Food Program and Summer Food Service Program. The annual adjustments are required by section 9 of the Richard B. Russell National School Lunch Act. The guidelines are intended to direct benefits to those children most in need and are revised annually to account for changes in the Consumer Price Index.

DATES: Applicable July 1, 2023.

FOR FURTHER INFORMATION CONTACT: Penny Burke, Program Monitoring and Operational Support Division, Child Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, 1320 Braddock Place, Suite 401, Alexandria, Virginia 22314, 303–844–0357.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice has been determined to be not significant and was not reviewed by the Office of Management and Budget in conformance with Executive Order 12866. The affected programs are listed in the Assistance Listings (*https://sam.gov/*) under No. 10.553, No. 10.555, No. 10.556, No. 10.558, and No. 10.559 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR part 415).

Background

Pursuant to sections 9(b)(1) and 17(c)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(1) and 42 U.S.C. 1766(c)(4)), and sections 3(a)(6) and 4(e)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)(6) and 1773(e)(1)(A)), the Department annually issues the Income Eligibility Guidelines for free and reduced price meals for the National School Lunch Program (7 CFR part 210), the Commodity School Program (7 CFR part 210), School Breakfast Program (7 CFR part 220), Summer Food Service Program (7 CFR part 225) and Child and Adult Care Food Program (7 CFR part 226) and the guidelines for free milk in the Special Milk Program for Children (7 CFR part 215). These eligibility guidelines are based on the Federal income poverty guidelines and are stated by household size. The guidelines are used to determine eligibility for free and reduced price meals and free milk in accordance with applicable program rules.

Definition of Income

In accordance with the Department's policy as provided in the Food and Nutrition Service publication Eligibility Manual for School Meals, ''income,'' as the term is used in this notice, means income before any deductions such as income taxes, Social Security taxes, insurance premiums, charitable contributions, and bonds. It includes the following: (1) monetary compensation for services, including wages, salary, commissions or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) Social Security; (5) dividends or interest on savings or bonds or income from estates or trusts; (6) net rental income; (7) public assistance or welfare payments; (8) unemployment compensation; (9) government civilian employee or military retirement, or pensions or veterans payments; (10) private pensions or annuities; (11) alimony or child support payments; (12) regular contributions from persons not living in the household; (13) net royalties; and (14) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources that would be available to pay the price of a child's meal.

''Income'', as the term is used in this notice, does *not* include any income or benefits received under any Federal programs that are excluded from consideration as income by any statutory prohibition. Furthermore, the value of meals or milk to children shall not be considered as income to their households for other benefit programs in accordance with the prohibitions in section 12(e) of the Richard B. Russell National School Lunch Act and section 11(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1760(e) and 1780(b)).

The Income Eligibility Guidelines

The following are the Income Eligibility Guidelines to be effective from July 1, 2023 through June 30, 2024. The Department's guidelines for free meals and milk and reduced price meals were obtained by multiplying the year 2023 Federal income poverty guidelines by 1.30 and 1.85, respectively, and by rounding the result upward to the next whole dollar.

This notice displays only the annual Federal poverty guidelines issued by the Department of Health and Human Services because the monthly and weekly Federal poverty guidelines are not used to determine the Income Eligibility Guidelines. The chart details the free and reduced price eligibility criteria for monthly income, income received twice monthly (24 payments per year); income received every two weeks (26 payments per year) and weekly income.

Income calculations are made based on the following formulas: monthly income is calculated by dividing the annual income by 12; twice monthly income is computed by dividing annual income by 24; income received every two weeks is calculated by dividing annual income by 26; and weekly income is computed by dividing annual income by 52. All numbers are rounded

upward to the next whole dollar. The numbers reflected in this notice for a family of four in the 48 contiguous States, the District of Columbia, Guam and the territories represent an increase of 8.1 percent over last year's level for a family of the same size.

Authority: Section 9(b)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(1)(A)).

BILLING CODE 3410–30–P

INCOME ELIGIBILITY GUIDELINES

Effective from July 1, 2023 to June 30, 2024

HOUSEHOLD SIZE	FEDERAL POVERTY GUIDELINES	REDUCED PRICE MEALS - 185 %					FREE MEALS - 130 %				
	ANNUAL	ANNUAL	MONTHLY	TWICE PER MONTH	EVERY TWO WEEKS	WEEKLY	ANNUAL	MONTHLY	TWICE PER MONTH	EVERY TWO WEEKS	WEEKLY
48 CONTIGUOUS STATES, DISTRICT OF COLUMBIA, GUAM, AND TERRITORIES											
1	14,580	26,973	2,248	1,124	1,038	519	18,954	1,580	790	729	365
2	19,720	36,482	3,041	1,521	1,404	702	25,636	2,137	1,069	986	493
3	24,860	45,991	3,833	1,917	1,769	885	32,318	2,694	1,347	1,243	622
4	30,000	55,500	4,625	2,313	2,135	1,068	39,000	3,250	1,625	1,500	750
5	35,140	65,009	5,418	2,709	2,501	1,251	45,682	3,807	1,904	1,757	879
6	40,280	74,518	6,210	3,105	2,867	1,434	52,364	4,364	2,182	2,014	1,007
7	45,420	84,027	7,003	3,502	3,232	1,616	59,046	4,921	2,461	2,271	1,136
8	50,560	93,536	7,795	3,898	3,598	1,799	65,728	5,478	2,739	2,528	1,264
For each add'l family member, add	5,140	9,509	793	397	366	183	6,682	557	279	257	129
ALASKA											
1	18,210	33,689	2,808	1,404	1,296	648	23,673	1,973	987	911	456
2	24,640	45,584	3,799	1,900	1,754	877	32,032	2,670	1,335	1,232	616
3	31,070	57,480	4,790	2,395	2,211	1,106	40,391	3,366	1,683	1,554	777
4	37,500	69,375	5,782	2,891	2,669	1,335	48,750	4,063	2,032	1,875	938
5	43,930	81,271	6,773	3,387	3,126	1,563	57,109	4,760	2,380	2,197	1,099
6	50,360	93,166	7,764	3,882	3,584	1,792	65,468	5,456	2,728	2,518	1,259
7	56,790	105,062	8,756	4,378	4,041	2,021	73,827	6,153	3,077	2,840	1,420
8	63,220	116,957	9,747	4,874	4,499	2,250	82,186	6,849	3,425	3,161	1,581
For each add'l family member, add	6,430	11,896	992	496	458	229	8,359	697	349	322	161
HAWAII											
1	16,770	31,025	2,586	1,293	1,194	597	21,801	1,817	909	839	420
2	22,680	41,958	3,497	1,749	1,614	807	29,484	2,457	1,229	1,134	567
3	28,590	52,892	4,408	2,204	2,035	1,018	37,167	3,098	1,549	1,430	715
4	34,500	63,825	5,319	2,660	2,455	1,228	44,850	3,738	1,869	1,725	863
5	40,410	74,759	6,230	3,115	2,876	1,438	52,533	4,378	2,189	2,021	1,011
6	46,320	85,692	7,141	3,571	3,296	1,648	60,216	5,018	2,509	2,316	1,158
7	52,230	96,626	8,053	4,027	3,717	1,859	67,899	5,659	2,830	2,612	1,306
8	58,140	107,559	8,964	4,482	4,137	2,069	75,582	6,299	3,150	2,907	1,454
For each add'l family member, add	5,910	10,934	912	456	421	211	7,683	641	321	296	148

Cynthia Long,

Administrator, Food and Nutrition Service.

[FR Doc. 2023–02739 Filed 2–8–23; 8:45 am]

BILLING CODE 3410–30–C

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AD33

Information Collection; Oil and Gas Resources

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the re-instatement of the information collection for Oil and Gas Resources, 0596–0101.

DATES: Comments must be received in writing on or before April 10, 2023 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to USDA-Forest Service. Attn: Director-Minerals and Geology Management, 1617 Cole Boulevard, Building 17, Lakewood, CO 80401. Comments also may be submitted via facsimile to 303–275–5122 or Electronically: Via the Federal eRulemaking Portal: *https://www.regulations.gov,* 0596–AD33.

Comments submitted in response to this notice may be made available to the public through relevant websites and upon request. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

The public may request an electronic copy of the draft supporting statement and/or any comments received be sent via return email. Requests should be emailed to the contact listed in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Sherri Thompson, Assistant Director Leasable Minerals, at 303–275–5147 or by mail at 1617 Cole Boulevard, Building 17, Lakewood, CO 80401. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Oil and Gas Resources, 36 CFR part 228, subpart E.

OMB Number: 0596–0101.

Expiration Date of Approval: Three years from final approval.

Type of Request: Reinstatement.

Abstract: The current rule contains procedures the Forest Service, USDA will use to accomplish the purposes of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, and other applicable mineral leasing and environmental protection statutes, in offering oil and gas leases and managing the development of oil and gas resources on National Forest System lands. The Leasing Reform Act authorizes the Secretary of Agriculture to develop procedures and regulations governing leasing for oil and gas resources. including bonding and reclamation requirements, within the National Forest System. This authority was formerly exercised by the Bureau of Land Management. These regulations achieve our primary objectives of ensuring effective compliance with all applicable environmental protection statutes, as most recently construed by the Federal Courts, in conjunction with meeting the intent of Congress codified in the Leasing Reform Act. These regulations have been designed to work in coordination with similar regulations of the Department of the Interior, and to promote a cooperative process between the Federal agencies, the oil and gas industry, and members of the public who are interested in the management of Federal lands and resources.

Estimate of Annual Burden: 30 Minutes.

Type of Respondents: Public.

Estimated Annual Number of Respondents: 2,250.

Estimated Annual Number of Responses per Respondent: 2,250.

Estimated Total Annual Burden on Respondents: 1,125 hours.

Comment Is Invited

Comment is invited on: (1) whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden 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 to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Date: February 2, 2023.

Troy Heithecker,

Associate Deputy Chief, National Forest System.

[FR Doc. 2023–02663 Filed 2–8–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2023–0001]

Notice of Intent To Prepare an Environmental Impact Statement for the Wood River Watershed, Custer County, Dawson County, Buffalo County, Hall County, and Merrick County, Nebraska

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: The Natural Resources Conservation Service (NRCS) Nebraska State Office announces its intent to prepare an EIS for the Wood River Watershed Project in the proximity of Oconto, Nebraska, downstream to Grand Island, Nebraska. The EIS process will examine the potential impacts of alternative solutions to reduce flood risk and damages caused by flooding to the communities and agricultural lands throughout the watershed. NRCS is requesting comments to identify significant issues, potential alternatives, information, and analyses relevant to the proposed action from all interested individuals, Federal and State agencies, and Tribes.

DATES: We will consider comments that we receive by March 13, 2023. Comments received after the close of the comment period will be considered to the extent possible.

ADDRESSES: We invite you to submit comments in response to this notice. You may submit your comments through one of the methods below:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for docket ID NRCS–2023–0001. Follow the online instructions for submitting comments; or
- *Mail or Hand Delivery:* John Petersen, Project Manager, JEO Consulting Group, 11213 Davenport Street, Ste. 200, Omaha, NE 68154. For written comments, specify the docket ID NRCS–2023–0001.

All comments received will be posted without change and made publicly available on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Britt Weiser, telephone: (402) 437–4116; email: *Britt.Weiser@usda.gov*, for information regarding general NRCS policy; or John Petersen, telephone: (402) 392–9923, email: *jpetersen@jeo.com* for information specific to the Wood River Watershed Project; or visit the project website at: *https://tinyurl.com/3k6ukz7w.*

Individuals who require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Purpose and Need

The primary purpose for watershed planning and preparation of this EIS is to provide flood prevention or flood risk reduction measures to the communities and agricultural lands in the Wood River Watershed located in the jurisdiction of the Central Platte Natural Resources District (CPNRD) across portions of Custer, Dawson, Buffalo, Hall, and Merrick Counties in south-central Nebraska. The purposes of watershed planning are authorized by the Watershed Protection and Flood Prevention Act of 1954, (Pub. L. 83–566) as amended, and the Flood Control Act of 1944 (Pub. L. 78–534).

Action is needed because areas of the Wood River Watershed have experienced repeated and damaging flooding, including major floods in 1967, 2005, and 2019. The Wood River Watershed experiences both flash and riverine floods from the Wood River and various tributaries. Flood damages are exacerbated by the high groundwater table in the region. Outside of the Wood River Watershed's communities, the majority of land is used for row-crop agriculture. Flood damages to cropland and pasture occur due to inundation, sediment deposition, scour, and erosion.

The earliest recorded flood impacted the watershed in 1883, and recurring floods have been reported throughout the 1940s to present day. The most extensive flood event occurred in 1967 when the Wood River overflowed its banks following a rainfall of over 10 inches. The Wood River inundated the City of Grand Island, killing three people and damaging approximately 1,800 buildings. In 2004 a levee and diversion channel were constructed to protect the City of Grand Island from high flows in the Wood River. This system was put to the test in 2005 when it successfully protected the City of Grand Island.

In 2005 a severe thunderstorm dropped 11 inches of rain near the City of Wood River, resulting in a flash flood and the evacuation of a dozen homes. It was estimated that every structure in the City of Wood River sustained some sort of storm or flood damage following the event. In total, the 2005 flash flood caused $10 million in damages.

The Wood River Watershed experienced severe flooding in 2019 during a bomb cyclone event in March, and then later flooding in July. In the City of Wood River, more than 350 homes were flooded in March 2019, with almost 60 of those having some sort of structural damage. In the City of Gibbon, the Wood River crested at a record high of 17.4 feet on March 14, 2019. This resulted in much of Gibbon being flooded both north and south of Highway 30.

Preliminary Proposed Action and Alternatives

The proposed action may include a variety of measures that will meet the purpose and need of reducing flood risk and damages to the Wood River Watershed. These measures may be both structural and non-structural, including channel widening, construction of diversion channels, construction of levees, construction of detention cells, stream restoration and construction of wetlands, installation of upland conservation measures, construction of dams, property acquisition and demolition, property relocation, floodproofing of structures, floodplain regulation and zoning, and interior drainage or storm sewer system improvements.

The EIS objective is to formulate and evaluate alternatives for flood prevention or flood damage reduction in the Wood River Watershed. Preliminary investigation has determined that one or a combination of the following alternatives are the most likely to be effective and should be considered for further evaluation:

Proposed Action Alternative 1: Diversion Channel

This alternative involves the construction of a new diversion channel combined with berms to intercept and re-route high flows from the Wood River south to the Platte River. West of Gibbon, there is a location where the Wood River meanders nearly adjacent to Highway 30. This would be an optimum location to divert flood waters to the south, underneath Interstate 80, and into the Platte River. A diversion channel of this size would entail excavating a new, properly sized channel approximately 20,000 feet in length and lined on both sides by berms to retain flows within the channel. The diversion channel would need to cross Highway 30, the Union Pacific Railroad, and both the eastbound and westbound lanes of Interstate 80, to reach the Platte River. This alternative would be effective at reducing flood risk for Gibbon and all other downstream communities impacted by the Wood River.

Proposed Action Alternative 2: Levees

A levee running adjacent and through the north end of Gibbon directly south of the Wood River would potentially protect the community from flood waters overflowing the southern bank of the Wood River. The levee would need to be approximately 7,200 feet long and tie into the Highway 30 embankment on both sides of Gibbon. Depending on the level of protection, the levee would range from approximately 5 to 10 feet tall. Currently, the levee is sized to protect Gibbon from the 50-year event. A higher level of protection is possible, but would require raising the Highway 30 grade where the levee ties in. A closure section between the Union Pacific Railroad and Highway 30 embankment might also be needed to keep water from flowing in the ditch. Constructing a levee along the north side of Gibbon between existing housing structures and the industrial processing facility would be challenging. It would require property acquisition and demolition. The final footprint of the levee can be adjusted based on real estate or property issues.

A levee on the north side of Wood River would protect the city from flooding up a selected level of design. Currently, the proposed Wood River north levee will protect the city from a 50-year event. This levee would be 8 to 10 feet tall and tie into the Highway 30 embankment. The level of protection is

limited by the elevation of the Highway. Adding a grade raise to the highway where the levee ties in or continuing the levee south of the Highway could potentially increase the level of projection up the 100-year flood event. Further analysis and modeling are needed to properly locate and size this levee.

Proposed Action Alternative 3: Detention Cells

This alternative includes surface storage located south of the City of Wood River and Highway 30. The subbasins to the south of Highway 30 flood primarily agricultural land with shallow overland flow. These flows eventually combine with the main channel of the Wood River south of Alda. These subbasin flows contribute to some shallow flooding along the entire southern extent of the Lower Wood River Watershed. There is ample room for detention storage south of Wood River, just north of Interstate 80. This would lower peak flows when the main channel combines near Alda and provide flooding relief for agricultural lands. It is possible to lower the level of protection by reducing storage, which could dramatically reduce construction costs. Optimizing the size and locations of this alternative to determine optimum economic benefit needs to be performed. This includes determining if this option is beneficial with different combinations, and the optimal location and configuration of a detention cell along with flow paths. The detention cell would also have the potential for environmental benefits, such as habitat for threatened and endangered species.

Proposed Action Alternative 4: Single Dam or Multiple Dams

This alternative consists of constructing one large dam or multiple dams in the Upper and Lower Wood River Watersheds along contributing subbasins to retain floodwaters and reduce flood risk in the downstream communities.

Summary of Expected Impacts

Early agency scoping of this federally assisted action indicates that proposed alternatives may have significant local, regional, or national impacts on the environment. Potential impacts include wetland and flood plain alteration due to the construction of these proposed alternatives. Potential realignment or raising of roads and railroads could occur, depending on the location of the proposed alternatives. The levees would impact several dozen property owners and businesses. The proposed action would reduce flood damage to structures and infrastructure in Gibbon and Wood River. Other actions, like the detention cells, may improve wildlife habitat.

NRCS will coordinate with other federal agencies throughout the planning process to ensure the proper measures are being taken to avoid and minimize impacts before considering mitigation. Conservation measures will be considered to avoid and minimize environmental impacts by implementing best management practices.

Anticipated Permits and Authorizations

The following permits and other authorizations are anticipated to be required:

- Clean Water Act (CWA) Section 404 Permit: Proposed Action may require permit from the U.S. Army Corps of Engineers;
- CWA Section 402 Permit: Project may require National Pollutant Discharge Elimination System Permit; and
- Dam Safety and Floodplain Permits: Local dam safety and floodplain permits may be required depending on the final alternatives selected.

Schedule of Decision-Making Process

A Draft EIS (DEIS) will be prepared and circulated for review and comment by agencies, Tribes, consulting parties, and the public as required by 40 CFR 1503.1, 1502.20, 1506.11, 1502.17, and 7 CFR 650.13. DEIS is anticipated to be complete and available for public review within 18 months of publication of this document. Once DEIS is completed, a Notice of Availability (NOA) will be published in the **Federal Register** and a public review period of 45 days will be provided. Comments on DEIS will be addressed in the Final EIS. A subsequent NOA will be published in the **Federal Register** indicating the availability of the Final EIS. A Final EIS is anticipated to be published within 5 months of completion of the public comment period for the DEIS. After a 30-day review period, the Record of Decision (ROD) will be signed by the decision maker and responsible federal official for the project, the NRCS Nebraska State Conservationist, Mr. Robert Lawson. The ROD will be made available to the public. Based on the analysis, NRCS will decide whether to provide financial assistance to the CPNRD to implement the preferred alternative identified in the Final EIS.

Public Scoping Process

An initial public scoping meeting was held virtually via Microsoft Teams on August 18, 2020, to present the project and develop the scope of the draft environmental assessment. Scoping meeting presentation materials, including a video recording of the meeting, is available on the project website, along with project background information: *https://tinyurl.com/3k6ukz7w.*

This meeting involved a project presentation followed by a group question-and-answer period. Project team members were available for discussion of individual questions. Scoping provides the ability for the public to provide input on the kinds of issues that should be addressed, what alternatives should be considered, impacts and additional research that should be considered, and any actions that could be related to the project.

A second public meeting will be conducted after DEIS is completed. Comments received, including the names and addresses of those who comment, will be part of the public record. The date, time, and locations of future scoping meetings will be announced on the project website, the sponsor's website, Nebraska NRCS social media, and published in the local newspaper.

Identification of Potential Alternatives, Information, and Analyses

NRCS invites agencies, Tribes, consulting parties, and individuals who have special expertise, legal jurisdiction, or interest in the Wood River Watershed Project to provide comments concerning the scope of the analysis and identification of relevant information and studies. All interested parties are invited to provide input related to the identification of potential alternatives, information, and analyses relevant to the Proposed Action in writing or during a public scoping meeting.

NRCS will coordinate the scoping process to correspond with any required National Historic Preservation Act (NHPA) processes, as allowed in 36 CFR 800.2(d)(3) and 800.8 (54 U.S.C. 306108). The information about historic and cultural resources within the area potentially affected by the proposed project will assist NRCS in identifying and evaluating impacts to such resources in the context of both National Environmental Policy Act (NEPA) and NHPA.

NRCS will consult with Native American tribes on a government-to-government basis in accordance with 36 CFR 800.2 and 800.3, Executive Order 13175, and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources and historic

properties, will be given due consideration.

Authorities

This document is published as required by the NEPA regulations regarding publication of a notice of intent to issue an environmental impact statement (40 CFR 1501.9(d)). This EIS will be prepared to evaluate potential environmental impacts as required by NEPA section 102(2)(C); the Council on Environmental Quality regulations (40 CFR parts 1500–1508); and NRCS regulations that implement NEPA in 7 CFR part 650. Watershed planning is authorized under the Watershed Protection and Flood Prevention Act of 1954, as amended, (Pub. L. 83–566) and the Flood Control Act of 1944 (Pub. L. 78–534).

Federal Assistance Programs

The title and number of the Federal assistance program in the Catalog of Federal Domestic Assistance to which this Notice of Funding Availability applies is 10.904 Watershed Protection and Flood Prevention.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive order are to foster an intergovernmental partnership and a strengthened federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. This program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and TTY) or dial 711 for Telecommunicaions Relay Service (both voice and text telephone users can initiate this call from any phone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410, or email: *OAC@usda.gov.* USDA is an equal opportunity provider, employer, and lender.

Robert D. Lawson,

Nebraska State Conservationist, Natural Resources Conservation Service.

[FR Doc. 2023–02779 Filed 2–8–23; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Puerto Rico Advisory Committee to the U.S. Commission on Civil Rights; Corrections

AGENCY: Commission on Civil Rights.

ACTION: Notice: corrections.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** of Thursday, January 26, 2023, concerning a meeting of the Puerto Rico Advisory Committee. The notice is in the **Federal Register** of Thursday, January 26, 2023, in FR Doc. 2023–01513, in the second and third columns of page 4965. The document contained incorrect Zoom information. The correct Zoom information is as follows:

DATES: February 13, 2023, Monday, at 3:30 p.m. (AT):

ADDRESSES: Meeting will be held via Zoom.

Meeting Link (Audio/Visual): https://tinyurl.com/4fa77wme; password, if needed: USCCR–PR

Join by Phone (Audio Only): 1–551–285–1373; Meeting ID: 161 911 8291#

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, at *vmoreno@usccr.gov* or by phone at 434–515–0204.

Dated: February 6, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–02775 Filed 2–8–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Kansas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Kansas Advisory Committee (Committee) will hold a meeting via Zoom conference on,Tuesday February 28, 2023 at 3:00 p.m.–4:30 p.m. Central Time. The purpose of the meetings is for the committee to discuss potential topics and panelists for the upcoming briefing(s).

DATES: The meeting will be held on Tuesday, February 28, 2023:

ADDRESSES:

Join ZoomGov Meeting, *https://www.zoomgov.com/j/1613455088.*

Telephone Audio Only (833) 435–1820 Toll Free; Meeting ID: 161 345 5088.

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer, at *dbarreras@usccr.gov* or (202) 656–8937.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Barreras at *dbarreras@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Kansas Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Chair's Comments
IV. Committee Discussion
V. Next Steps
VI. Public Comment
VII. Adjournment

Dated: February 6, 2023.

David Mussatt,

Supervisory Chief, Regional Program Unit.

[FR Doc. 2023–02778 Filed 2–8–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Virginia Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Virginia Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a business meeting via web conference. The purpose of the meeting is to review, discuss, and revise the draft report on police oversight and accountability in Virginia.

DATES: Tuesday, February 28, 2023, at 12:00 p.m. Eastern Time and Wednesday, March 29, 2023, at 12: 00 p.m. Eastern Time

ADDRESSES: The meetings will be held via Zoom.

February 28th Business Meeting:

—*Registration Link (Audio/Visual): https://tinyurl.com/sznn8ce8*

—*Join by Phone (Audio Only):* 1–833–435–1820 USA Toll Free; Meeting ID: 160 709 7162

March 29th Business Meeting:

—*Registration Link (Audio/Visual): https://tinyurl.com/28tak76w*

—*Join by Phone (Audio Only):* 1–833–435–1820 USA Toll Free; Meeting ID: 160 375 3590

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 1–202–618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call-in number (audio only) or online registration link (audio/visual). An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind, and/or hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and meeting ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Melissa Wojnaroski at *mwojnaroski@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Virginia Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Announcements and Updates
IV. Discussion: Report Draft
V. Next Steps
VI. Public Comments
VII. Adjournment

Dated: February 6, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–02774 Filed 2–8–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–48–2022]

Foreign-Trade Zone (FTZ) 82—Mobile, Alabama; Authorization of Production Activity; Aker Solutions, Inc. (Subsea Oil and Gas Systems), Mobile, Alabama

On October 6, 2022, Aker Solutions, Inc., submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 82, in Mobile, Alabama.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (87 FR 62790–62791, October 17, 2022). On February 3, 2023, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: February 3, 2023.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2023–02735 Filed 2–8–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2139]

Approval of Expansion of Subzone 59B; CNH Industrial America LLC, Grand Island, Nebraska

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or

adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

Whereas, the Lincoln Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 59, has made application to the Board to expand Subzone 59B on behalf of CNH Industrial America LLC, located in Grand Island, Nebraska (FTZ Docket B–46–2022, docketed September 28, 2022);

Whereas, notice inviting public comment has been given in the **Federal Register** (87 FR 59775, October 3, 2022; correction 87 FR 65191, October 28, 2022) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiners' memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves the expansion of Subzone 59B on behalf of CNH Industrial America LLC, as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Dated: February 3, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2023–02732 Filed 2–8–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; and Final Determination of No Shipments; 2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) continues to determine that nine companies/company groupings subject to this administrative review of the antidumping duty (AD) order on wooden bedroom furniture (WBF) from the People's Republic of China (China) are part of the China-wide entity because they did not demonstrate eligibility for separate rates, and that seven companies/company groupings had no shipments of WBF during the period of review (POR), January 1, 2021, through December 31, 2021. Although invited to do so, interested parties did not comment on the preliminary results of this review. We have adopted the preliminary results of this review as the final results of the review.

DATES: Applicable February 9, 2023.

FOR FURTHER INFORMATION CONTACT: Krisha Hill, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4037.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 2022, Commerce published the preliminary results of this review and invited interested parties to comment.[1] No parties commented on the *Preliminary Results.* Accordingly, the *Preliminary Results* remain unchanged in the final results, and no decision memorandum accompanies this notice.

Scope of the Order [2]

The product covered by the *Order* is WBF from China.[3] For a complete description of the scope of this *Order, see* the appendix to this notice.

Final Results of Review

We received no comments, and we have made no changes to the *Preliminary Results.* We continue to find that nine companies/company groupings subject to this review are part of the China-wide entity because they did not demonstrate eligibility for separate rates, and that seven companies/company groupings had no shipments of WBF during the POR.

Final Determination of No Shipments

In the *Preliminary Results,* we determined, based on timely filed company certifications and our analysis of information obtained from CBP, that the following seven companies/company groupings did not export or sell subject merchandise during the POR: (1) Eurosa (Kunshan) Co., Ltd. and Eurosa Furniture Co., (PTE) Ltd.; (2) Jiangmen Kinwai Furniture Decoration Co., Ltd.; (3) Jiangmen Kinwai International Furniture Co., Ltd.; (4) Nanhai Jiantai Woodwork Co. Ltd. and Fortune Glory Industrial, Ltd. (HK Ltd.); (5) Shenyang Shining Dongxing Furniture Co., Ltd.; (6) Yeh Brothers World Trade Inc.; and (7) Zhangzhou Guohui Industrial & Trade Co., Ltd.[4] We received no comments from interested parties with respect to this determination. Therefore, because the record indicates that these seven companies/company groupings did not export subject merchandise during the POR, we continue to find that they had no reviewable transactions during the POR.

China-Wide Entity

Commerce considers the following nine companies/company groupings for which a review was requested to be part of the China-wide entity because they did not demonstrate their eligibility for a separate rate: (1) Dongguan Sunrise Furniture Co., Taicang Sunrise Wood Industry, Co., Ltd., Shanghai Sunrise Furniture Co., Ltd., Fairmont Designs; (2) Dongguan Sunrise Furniture Co., Ltd., Taicang Sunrise Wood Industry Co., Ltd., Taicang Fairmont Designs Furniture Co., Ltd., Meizhou Sunrise Furniture Co., Ltd.; (3) Hang Hai Woodcraft's Art Factory; (4) Shenzhen Forest Furniture Co., Ltd.; (5) Sunforce Furniture (Hui-Yang) Co., Ltd., Sun Fung Wooden Factory, Sun Fung Co., Shin Feng Furniture Co., Ltd., Stupendous International Co., Ltd.; (6) Superwood Co. Ltd., Lianjiang Zongyu Art Products Co., Ltd.; (7) Xiamen Yongquan Sci-Tech Development Co., Ltd.; (8) Yihua Timber Industry Co., Ltd. (a.k.a. Guangdong Yihua Timber Industry Co., Ltd.); and (9) Yihua Lifestyle Technology Co., Ltd. Accordingly, for these final results, we determine that these nine companies/company groupings, none of which submitted a separate rate application or separate rate certification, are part of the China-wide entity.

In this review, no party requested a review of the China-wide entity, and Commerce did not self-initiate a review of the China-wide entity. Because we are not reviewing the China-wide entity in this review, the dumping margin previously established for the China-wide entity, which is 216.01 percent, is

[1] *See Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; Rescission, in Part; and Preliminary Determination of No Shipments;* 2021, 87 FR 61291 (October 11, 2022) (*Preliminary Results*).

[2] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China,* 70 FR 329 (January 4, 2005) (*Order*).

[3] Commerce revised certain Harmonized Tariff Schedule subheadings listed in the scope of the *Order* based on a request, and information obtained, from U.S. Customs and Border Protection (CBP). *See* Memorandum, ''Update to the ACE AD/CVD Case Reference File,'' dated concurrently with this notice.

[4] *See Preliminary Results,* 87 FR at 61292.

not subject to change as a result of this review.[5]

Assessment Rates

Commerce will determine, and CBP shall assess, ADs on all appropriate entries covered by this review in accordance with section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.212(b)(1). We will instruct CBP to liquidate entries of subject merchandise exported by the companies/company groupings that failed to qualify for a separate rate, and any suspended entries of subject merchandise during the POR under the case numbers of companies that claimed no shipments, at the China-wide entity rate. 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).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of subject merchandise from China entered, or withdrawn from warehouse, for consumption on, or after, the publication date of this notice, as provided by section 751(a)(2)(C) of the Act: (1) for any previously investigated or reviewed China or non-China exporter that has a separate rate and for which a review was not requested, the cash deposit rate will continue to be the exporter's existing cash deposit rate; (2) for all China exporters of subject merchandise that do not have a separate rate, including those exporters that failed to establish their eligibility for a separate rate in this review, the cash deposit rate will be equal to the dumping margin assigned to the China-wide entity, which is 216.01 percent; and (3) for all non-China exporters of subject merchandise that do not have a separate rate, the cash deposit rate will be equal to the dumping margin applicable to the China exporter(s) that supplied the non-China exporter. These 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 ADs 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 ADs occurred and the subsequent assessment of double ADs.

Administrative Protective Order

This notice also serves as the only 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). 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 the final results of this review in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h) and 351.221(b)(5).

Dated: February 2, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Order

The product covered by the *Order* is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests,[6] highboys,[7] lowboys,[8] chests of drawers,[9] chests,[10] door chests,[11] chiffoniers,[12] hutches,[13] and armoires;[14] (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the *Order* excludes the following items: (1) seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts

[5] *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2020,* 87 FR 21093 (April 11, 2022); *see also Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture from the People's Republic of China,* 72 FR 46957 (August 22, 2007).

[6] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[7] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[8] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[9] A chest of drawers is typically a case containing drawers for storing clothing.

[10] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[11] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[12] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[13] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[14] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audiovisual entertainment systems.

predominate;[15] (9) jewelry armories;[16] (10) cheval mirrors;[17] (11) certain metal parts;[18] (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set; (13) upholstered beds;[19] (14) toyboxes;[20] (15) certain enclosable wall bed units;[21] (16) certain shoe cabinets;[22] and (17) certain bed bases.[23]

Imports of subject merchandise are classified under subheadings 9403.50.9041, 9403.50.9042 and 9403.50.9045 of the Harmonized Tariff Schedule of the United States (HTSUS) as ''wooden . . . beds'' and under subheading 9403.50.9080 of the HTSUS as ''other . . . wooden furniture of a kind used in the bedroom.'' In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may be entered under subheadings 9403.91.0005 or 9403.91.0080 of the HTSUS. Subject merchandise may also be entered under subheading 9403.91.0010. Further, framed glass mirrors may be entered under subheading 7009.92.1090 or 7009.92.5095 of the HTSUS as ''glass mirrors . . . framed.'' The *Order* covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this *Order* is dispositive.

[FR Doc. 2023–02734 Filed 2–8–23; 8:45 am]

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[15] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. *See* CBP's Headquarters Ruling Letter 043859, dated May 17, 1976.

[16] Any armoire, cabinet, or other accent item for the purpose of storing jewelry, not to exceed 24 inches in width, 18 inches in depth, and 49 inches in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door or one front door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. *See* Memorandum, ''Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China,'' dated August 31, 2004; *see also Wooden Bedroom Furniture from the People's Republic of China: Final Changed Circumstances Review, and Determination to Revoke Order in Part,* 71 FR 38621 (July 7, 2006).

[17] Cheval mirrors are any framed, tiltable mirror with a height in excess of 50 inches that is mounted on a floorstanding, hinged base. Additionally, the scope of the Order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, *i.e.,* a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet line with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. *See Wooden Bedroom Furniture from the People's Republic of China: Final Changed Circumstances Review and Determination To Revoke Order in Part,* 72 FR 948 (January 9, 2007).

[18] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.,* wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form.

[19] Upholstered beds that are completely upholstered, *i.e.,* containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part,* 72 FR 7013 (February 14, 2007).

[20] To be excluded the toy box must: (1) be wider than it is tall; (2) have dimensions within 16 inches to 27 inches in height, 15 inches to 18 inches in depth, and 21 inches to 30 inches in width; (3) have a hinged lid that encompasses the entire top of the box; (4) not incorporate any doors or drawers; (5) have slow-closing safety hinges; (6) have air vents; (7) have no locking mechanism; and (8) comply with American Society for Testing and Materials (''ASTM'') standard F963–03. Toy boxes are boxes generally designed for the purpose of storing children's items such as toys, books, and playthings. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part,* 74 FR 8506 (February 25, 2009). Further, as determined in the scope ruling memorandum, ''Wooden Bedroom Furniture from the People's Republic of China: Scope Ruling on a White Toy Box,'' dated July 6, 2009, the dimensional ranges used to identify the toy boxes that are excluded from the *Order* apply to the box itself rather than the lid.

[21] Excluded from the scope are certain enclosable wall bed units, also referred to as murphy beds, which are composed of the following three major sections: (1) a metal wall frame, which attaches to the wall and uses coils or pistons to support the metal mattress frame; (2) a metal frame, which has euro slats for supporting a mattress and two legs that pivot; and (3) wood panels, which attach to the metal wall frame and/or the metal mattress frame to form a cabinet to enclose the wall bed when not in use. Excluded enclosable wall bed units are imported in ready to assemble format with all parts necessary for assembly. Enclosable wall bed units do not include a mattress. Wood panels of enclosable wall bed units, when imported separately, remain subject to the *Order.*

[22] Excluded from the scope are certain shoe cabinets 31.5–33.5 inches wide by 15.5–17.5 inches deep by 34.5–36.5 inches high. They are designed strictly to store shoes, which are intended to be aligned in rows perpendicular to the wall along which the cabinet is positioned. Shoe cabinets do not have drawers, rods, or other indicia for the storage of clothing other than shoes. The cabinets are not designed, manufactured, or offered for sale in coordinated groups or sets and are made substantially of wood, have two to four shelves inside them, and are covered by doors. The doors often have blinds that are designed to allow air circulation and release of bad odors. The doors themselves may be made of wood or glass. The depth of the shelves does not exceed 14 inches. Each shoe cabinet has doors, adjustable shelving, and ventilation holes.

[23] Excluded from the scope are certain bed bases consisting of: (1) a wooden box frame; (2) three wooden cross beams and one perpendicular center wooden support beam; and (3) wooden slats over the beams. These bed bases are constructed without inner springs and/or coils and do not include a headboard, footboard, side rails, or mattress. The bed bases are imported unassembled.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC755]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of hybrid meeting.

SUMMARY: The Center of Independent Experts (CIE) review of the Ecosystem Status Reports will be held February 28, 2023, through March 2, 2023.

DATES: The meeting will be held on Tuesday, February 28, 2023, through Thursday, March 2, 2023, from 9 a.m. to 5 p.m., Pacific Time.

ADDRESSES:

Council address: The meeting will be a hybrid meeting. The in-person component of the meeting will be held at the Alaska Fisheries Science Center, in Room 2079, 7600 Sand Point Way, NE, Building 4, Seattle, WA 98115.

If you plan to attend in-person you need to notify Stephani Zador at *stephani.zador@noaa.gov* at least two days prior to the meeting (or two weeks prior if you are a foreign national). You will also need a valid U.S. Identification Card. If you are attending virtually, join the meeting online through the link at *https://apps-afsc.fisheries.noaa.gov/Plan_Team/2023_ESR_CIE/.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Stephani Zador, Alaska Fishery Science Center staff; phone: (206) 526–4693; email: *stephani.zador@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, February 28, 2023, Through Thursday, March 2, 2023

The CIE will conduct a review of the goals of the Ecosystem Status Reports efforts and how best to achieve them. The agenda is subject to change, and the latest version will be posted at *https://appsafsc.fisheries.noaa.gov/Plan_Team/2023_ESR_CIE/* prior to the meeting, along with meeting materials.

Public Comment

An opportunity for public comment will be provided during the meeting. For more information, please visit the link at *https://appsafsc.fisheries.noaa.gov/Plan_Team/2023_ESR_CIE/.*

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

Dated: February 6, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–02785 Filed 2–8–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC750]

Marine Mammals; File No. 27077

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that WSP Wild Water Productions Limited, St Stephen's Avenue, Bristol, BS1 1YL, United Kingdom, (Responsible Party: Joanna Barwick) has applied in due form for a permit to conduct commercial and educational photography on marine mammals.

DATES: Written, telefaxed, or email comments must be received on or before March 13, 2023.

ADDRESSES: The application and related documents are available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 27077 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Erin Markin, Ph.D., (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to film gray whales (*Eschrichtius robustus*) feeding on shrimp in the intertidal zone of Puget Sound, WA. The filming is for a natural history television series, which follows the journey of rivers from source to sea. Up to 180 gray whales may be harassed during filming from vessels, land, unmanned aircraft systems, and snorkelers. If encountered, 70 of each of the following species may be filmed and unintentionally harassed: killer whales (*Orcinus orca;* west coast transient stock), harbor porpoise (*Phocoena phocoena*), California sea lions (*Zalophus californianus*), Steller sea lions (*Eumetopias jubatus*), and harbor seals (*Phoca vitulina*). The permit would expire on May 31, 2024.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 3, 2023.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–02709 Filed 2–8–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC758]

Marine Mammals and Endangered Species

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

ACTION: Notice; issuance of permits, permit amendments, and permit modifications.

SUMMARY: Notice is hereby given that permits, permit amendments, and permit modifications have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan, Ph.D., (Permit Nos. 26750 and 27029), Amy Hapeman (Permit Nos. 24334–01, 26725, and 26778), Erin Markin, Ph.D., (Permit No. 26727), and Malcolm Mohead (Permit No. 22671–03); at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** on the dates listed below that requests for a permit, permit amendment, or permit modification had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the activities, go to *www.federalregister.gov* and search on the permit number provided in Table 1 below.

TABLE 1—ISSUED PERMITS, PERMIT AMENDMENTS, AND PERMIT MODIFICATIONS

Permit No.	RTID	Applicant	Previous **Federal Register** notice	Issuance date
22671–03	0648–XC548	U.S. Geological Survey, Conte Anadromous Fish Research Lab, 1 Migratory Way, Turners Falls, MA 01376 (Responsible Party: Alexander Haro, Ph.D.).	87 FR 68455, November 15, 2022	January 9, 2023.
24334–01	0648–XC563	Alaska Department of Fish and Game, P.O. Box 25526, Juneau, AK 99802 (Responsible Party: Lori Quakenbush).	87 FR 71303, November 22, 2022	January 25, 2023.
26725	0648–XC502	Florian Graner, Ph.D., 4021 Beach Drive, Freeland, WA 98249.	87 FR 65191, October 28, 2022	January 19, 2023.
26727	0648–XC534	Aaron Lynton, 986 Kupulau Drive, Kihei, HI 96853.	87 FR 67677, November 9, 2022	January 23, 2023.

TABLE 1—ISSUED PERMITS, PERMIT AMENDMENTS, AND PERMIT MODIFICATIONS—Continued

Permit No.	RTID	Applicant	Previous **Federal Register** notice	Issuance date
26750	0648–XC550	Burke Museum, University of Washington, Box 353010, Seattle, WA 98195 (Responsible Party: Gabriela Chavarria, Ph.D.).	87 FR 68131, November 14, 2022	January 10, 2023.
26778	0648–XC451	Wildstar Films Ltd., Embassy House, Queens Avenue, Bristol, UK, BS8 1SB (Responsible Party: Jennie Hammond).	87 FR 61574, October 12, 2022	January 19, 2023
27029	0648–XC595	Echo Pictures Ltd., c/o Offspring Films, 1st & 2nd floor, Dock House, Welsh Back, Bristol, UK, BS1 4SB (Responsible Party: Helen Sampson).	87 FR 75042, December 7, 2022	January 23, 2023.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of these permit was based on a finding that such permits: (1) were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in Section 2 of the ESA.

Authority: The requested permits have been issued under the MMPA of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), as applicable.

Dated: February 3, 2023.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–02710 Filed 2–8–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC756]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a hybrid meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Bering Sea Fishery Ecosystem Plan Local Knowledge, Traditional Knowledge, and Subsistence Taskforce (LKTKS) will be held March 2, 2023, through March 3, 2023.

DATES: The meeting will be held on Thursday, March 2, 2023 through Friday, March 3, 2023, from 8:30 a.m. to 4:30 p.m., Alaska Time.

ADDRESSES:

Meeting address: The meeting will be a hybrid meeting. The in-person component of the meeting will be held at the North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252 or join the meeting online through the links at *https://meetings.npfmc.org/Meeting/Details/2977.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting are given under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Kate Haapala Council staff; phone: (907) 271–2809 and email: *kate.haapala@noaa.gov.* For technical support, please contact our administrative staff; email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Thursday, March 2, 2023 Through Friday, March 3, 2023

The LKTKS Taskforce agenda will include: (a) summary of Taskforce work to-date; (b) changes to materials since December 2022; (c) review and finalize the LKTKS Protocol; (d) review and finalize LKTKS onramp recommendations; (e) review and finalize LKTKS Policy statement; (f) reflections and final recommendations; and (g) other business. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/2977* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/2977.*

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/2977* by 5 p.m. Alaska time on Wednesday, March 1, 2023. An opportunity for oral public testimony will also be provided during the meeting.

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

Dated: February 6, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–02786 Filed 2–8–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—State Technical Assistance Projects To Improve Services and Results for DeafBlind Children and National Technical Assistance and Dissemination Center for DeafBlind Children; Corrections

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice; corrections.

SUMMARY: On December 19, 2022, the Department of Education (Department) published in the **Federal Register** a notice inviting applications (NIA) for new awards for fiscal year (FY) 2023 for State Technical Assistance Projects to

Improve Services and Results for DeafBlind Children and a National Technical Assistance and Dissemination Center for DeafBlind Children, Assistance Listing Number (ALN) 84.326T. The Department is amending the NIA by extending the application submission deadline and intergovernmental review deadline, increasing the estimated available funds, updating the estimated range of awards and average size of awards, updating the maximum award amounts, and allowing subgrants.

DATES:

Applicability Date: This correction is applicable February 9, 2023.

Deadline for Transmittal of Applications: March 13, 2023.

Deadline for Intergovernmental Review: May 12, 2023.

FOR FURTHER INFORMATION CONTACT: Susan Weigert, U.S. Department of Education, 400 Maryland Avenue SW, Room 5076, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–6522. Email: *Susan.Weigert@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: On December 19, 2022, we published the NIA in the **Federal Register** (87 FR 77575). Following the publication of the NIA, the Joint Explanatory Statement accompanying Division H of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328) indicated an intent by Congress to provide an increase of $1,000,000 for the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities—State Technical Assistance Projects to Improve Services and Results for DeafBlind Children and National Technical Assistance and Dissemination Center for DeafBlind Children to strengthen support for the abilities and needs of children with deaf-blindness, including through intervener services. Accordingly, we are correcting the NIA to reflect the updated estimated range of awards and average size of awards, updated maximum award amounts, and allowance of subgrants.

In addition, we are extending the application deadline date to March 13, 2023, and extending the intergovernmental review deadline to May 12, 2023. Applicants that have already submitted applications under the FY 2023 State Technical Assistance Projects to Improve Services and Results for DeafBlind Children and National Technical Assistance and Dissemination Center for DeafBlind Children competition may resubmit applications but are not required to do so. If a new application is not submitted, the Department will use the application that was submitted by the original deadline. If a new application is submitted, the Department will review the most recent application submitted before the deadline of March 13, 2023.

Other than extending the application submission deadline and intergovernmental review deadline, increasing the estimated available funds, updating the estimated range of awards and average size of awards, updating the maximum award amounts, and allowing subgrants, all other requirements and conditions stated in the NIA remain the same.

Program Authority: 20 U.S.C. 1462, 1463 and 1481.

Corrections

In FR Doc. 2022–27457, appearing on pages 77575–77585 of the **Federal Register** of December 19, 2022 (87 FR 77575), we make the following corrections:

(1) On page 77575, in the first column, following the heading ''Deadline for Transmittal of Applications:'' remove ''February 17, 2023.'' and add, in its place, ''March 13, 2023.''

(2) On page 77575, in the first column, following the heading ''Deadline for Intergovernmental Review:'' remove ''April 18, 2023.'' and add, in its place, ''May 12, 2023.''

(3) On page 77581, in the third column, following the heading ''Estimated Available Funds:'' remove ''The Administration requested $49,345,000 for the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program for FY 2023, of which we intend to use an estimated $11,100,000 for this competition; and $250,000,000 for the Personnel Development to Improve Services and Results for Children with Disabilities program, of which we intend to use an estimated $500,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.'' and add, in its place, ''$12,600,000, including $12,100,000 from the FY 2023 Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program appropriation and $500,000 from the FY 2023 Personnel Development to Improve Services and Results for Children with Disabilities Program appropriation.''

(4) On page 77581, in the third column, following the heading ''Estimated Range of Awards:'' remove ''$2,100,000'' and add, in its place, ''$2,200,000''.

(5) On page 77581, in the third column, following the heading ''Estimated Average Size of Awards:'' remove ''Focus Area A: $176,000. Focus Area B: $2,100,000.'' and add, in its place, ''Focus Area A: See chart. Focus Area B: $2,200,000.''

(6) On page 77581, in the third column, following the heading ''Maximum Award:'' remove ''In determining the maximum funding levels for each State, the Secretary considered, among other things, the following factors: (1) The total number of children from birth through age 21 in the State. (2) The number of children in poverty in the State. (3) The previous funding levels. (4) The minimum funding amounts. (5) The travel costs associated with serving the geographic location of the State'' and add, in its place, ''In determining the maximum funding levels for each State, the Secretary applied a standard percentage increase over the 2018 award amount for each State and then considered, among other things, the travel costs associated with serving the geographic location of the State''.

(7) On page 77582, in the first column, remove the chart titled ''FY 2023 FUNDING LEVELS BY STATE FOR FOCUS AREA A'' and add, in its place, the following chart:

''FY 2023 FUNDING LEVELS BY STATE FOR FOCUS AREA A

Alabama	$181,590
Alaska	145,323
Arizona	221,803
Arkansas	120,642
California	628,566
Colorado	172,439
Connecticut	106,731
Delaware	71,055
District of Columbia	71,055
Florida	474,903
Georgia	348,578
Hawaii	81,055
Idaho	96,109
Illinois	375,869
Indiana	228,772
Iowa	107,742
Kansas	128,597
Kentucky	164,366
Louisiana	167,031
Maine	71,055
Maryland	174,436
Massachusetts	166,152
Michigan	303,225
Minnesota	180,179
Mississippi	131,876
Missouri	204,153

"FY 2023 FUNDING LEVELS BY STATE FOR FOCUS AREA A—Continued

Montana	132,667
Nebraska	90,837
Nevada	123,430
New Hampshire	71,055
New Jersey	271,466
New Mexico	117,970
New York	596,455
North Carolina	339,984
North Dakota	85,266
Ohio	328,187
Oklahoma	148,623
Oregon	133,543
Pennsylvania	383,591
Rhode Island	71,055
South Carolina	161,936
South Dakota	108,622
Tennessee	239,905
Texas	628,566
Utah	120,736
Vermont	78,107
Virginia	258,237
Washington	212,573
West Virginia	100,556
Wisconsin	183,644
Wyoming	85,266
Puerto Rico	71,055
Pacific **	100,571
Virgin Islands	32,795
Total	10,400,000

** The areas to be served by this award are the outlying areas of American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, as well as the freely associated States of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. An applicant for this award must propose to serve all of these areas."

(8) On page 77582, in the first column, following the heading ''Focus Area B:'', remove, ''$2,100,000'' and add, in its place, ''$2,200,000''.

(9) On page 77582, in the third column, following the heading ''Subgrantees'', remove ''A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application. Under 34 CFR 75.708(e), a grantee may contract for supplies, equipment, and other services in accordance with 2 CFR part 200.'' and add, in its place, ''Under 34 CFR 75.708(b) and (c) a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: institutions of higher education, nonprofit organizations, and other public agencies suitable to carry out the activities proposed in the application. The grantee may award subgrants to entities it has identified in an approved application or that it selects through a competition under procedures established by the grantee.''

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document, the NIA, and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (TXT), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Katherine Neas,

Deputy Assistant Secretary, Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2023–02720 Filed 2–8–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Application for New Awards; Native American and Alaska Native Children in School Program

AGENCY: Office of English Language Acquisition, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2023 for the Native American and Alaska Native Children in School (NAM) Program, Assistance Listing Number 84.365C. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES:

Applications Available: February 9, 2023.

Deadline for Notice of Intent to Apply: February 24, 2023.

Deadline for Transmittal of Applications: April 25, 2023.

Deadline for Intergovernmental Review: June 26, 2023.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.* Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Celeste McLaughlin, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202. Telephone: (202) 245–7693. Email: *NAM@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the NAM program is to award grants to eligible entities to develop and enhance capacity to provide effective instruction and support to Native American and Alaska Native students, including Native Hawaiian and Native American Pacific Islander students, who are identified as English learners (ELs). The goal of this program is to support the teaching, learning, and studying of Native American languages while also increasing the English language proficiency and academic achievement of students served.

Background: Through previous competitions, the NAM program has funded a range of grantees that are currently implementing 16 projects across the country. As we are focused on closing long-standing opportunity, achievement, and attainment gaps that have continued to grow, there is also a need to increase the knowledge of what practices work to effectively improve learning outcomes for Native American and Alaska Native ELs.

Congress, in the Native American Languages Act of 1990, recognized the fundamental importance of preserving Native American languages. This legislation provides that it is the policy of the United States to—

Preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages.

25 U.S.C. 2903(1)

In addition, the legislation states that it is the policy of the United States to encourage and support the use of Native American languages as a medium of instruction in order to encourage and support—

(A) Native American language survival,

(B) Educational opportunity,

(C) Increased student success and performance,

(D) Increased student awareness and knowledge of their culture and history, and

(E) Increased student and community pride.

25 U.S.C. 2903(3)

This Federal policy is supported by growing recognition of the importance of Native language preservation in facilitating education success for Native students. In a 2007 study by Teachers of English to Students of Other Languages (TESOL), the majority of Native youth surveyed stated that they value their Native language, view it as integral to their sense of self, want to learn it, and view it as a means of facilitating their success in school and life.[1] Collaborative efforts between educators, families, and communities, the study suggests, may be especially promising ways to ensure that all Native students have the critical opportunity to learn their Native languages.

Not only is Native language instruction critical for student engagement and fostering a rich sense of self, but research has shown that students who are bilingual have certain cognitive and social benefits that their monolingual peers may lack.[2] Additionally, for students who are classified as ELs, well-implemented language instruction educational programs (as defined in this notice), including dual language approaches, may result in ELs performing equal to or better than their peers in English-only language instruction programs. These approaches have shown promise in increasing language acquisition in English and Native languages and may also promote greater achievement in the academic content areas, including English language arts and mathematics.[3]

Therefore, to facilitate high-quality language instruction and academic success for Native American and Alaska Native students who are classified as ELs, this competition includes an absolute priority for projects that will support the preservation and revitalization of Native American languages while also increasing the English language proficiency of the children served under the project.

The Department is also interested in supporting projects that promote school readiness of English learners in early learning environments. Transitions from early childhood education programs are most successful when ELs have appropriate supports, and we believe projects with a focus in this area will advance efforts to increase the field's understanding of how these transitional phases function for ELs. In addition, the Department is interested in supporting projects that establish partnerships between eligible entities and local partners working together to promote and elevate the value of multilingualism.

In order to encourage and promote the use of strategies that are likely to improve project outcomes for Native American and Alaska Native ELs, we include a selection criterion for applicants to describe the extent to which their proposed project designs are supported by a logic model that connects key project components to outcomes relevant to the program's purpose. Additionally, the Department has established performance measures for this program for the purpose of reporting under 34 CFR 75.110. We advise an applicant for a grant under this program to carefully consider these measures in conceptualizing the approach to, and evaluation for, its proposed project. Each grantee will be required to provide, in its annual performance and final reports, data about its progress in meeting these measures. Such evaluations help ensure that projects contribute to expanding the knowledge base on effective language instruction educational programs, including dual language practices, that prepare Native American and Alaska Native ELs to achieve college, career, and life success.

Priorities: This notice includes an absolute priority, one competitive preference priority, and one invitational priority. The absolute priority is from section 3127 of the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C. 6848). The competitive preference priority is from the Department's notice of final supplemental priorities and definitions (Supplemental Priorities), published in the **Federal Register** on December 10, 2021 (86 FR 70612).

Absolute Priority: For FY 2023, and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Projects that support the teaching, learning, and studying of Native American languages while also increasing the English language proficiency of the children served.

Competitive Preference Priority: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 5 points to an application, depending on how well the application meets the competitive preference priority.

This priority is:

Competitive Preference Priority—Promoting Equity in Student Access to Educational Resources, Opportunities, and Welcoming Environments (up to 5 points).

To meet this priority, applicants must propose projects designed to promote educational equity and adequacy in resources and opportunity for underserved students in early learning programs that examine the sources of inequity and inadequacy and implement responses, and that include establishing, expanding, or improving learning environments for multilingual learners, and increasing public awareness about the benefits of fluency in more than one language and how the coordination of language development in the school and the home improves student outcomes for multilingual learners.

Invitational Priority: For FY 2023 and any subsequent years in which we make awards from the list of unfunded applications from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets an invitational priority a competitive or absolute preference over other applications.

This priority is:

Strengthening Cross-Agency Coordination and Community Engagement to Advance Native American Languages While Increasing English Language Proficiency.

Under this invitational priority, we encourage applicants to propose a project that is designed to address the following priority area: Establishing partnerships between eligible entities

[1] Romero-Little, M.E., McCarty, T.L., Warhol, L., and Zepeda, O. (2007). Language policies in practice: Preliminary findings from a large-scale study of Native American language shift. *TESOL Quarterly* 41:3, 607–618.

[2] Valentino, R.A., and Reardon, S.F. (2015). Effectiveness of four instructional programs designed to serve English language learners: Variation by ethnicity and initial English proficiency. *Educational Evaluation and Policy Analysis,* doi: 10.3102/0162373715573310.

[3] Lindholm-Leary, K.J. (2001). Dual-language education (Vol. 28). Multilingual Matters.

and local partners working together to promote and elevate the teaching, learning, and studying of Native American languages while also increasing the English language proficiency and academic achievement of students served.

Definitions: The following definitions are from 34 CFR 77.1 and sections 3201 and 8101 of the ESEA (20 U.S.C. 7011 and 7801) and apply to the priorities, selection criteria, and performance measures in this notice. The source of each definition is noted in parentheses following the text of the definition.

Ambitious means promoting continued, meaningful improvement for program participants or for other individuals or entities affected by the grant, or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a performance target, whether a performance target is ambitious depends upon the context of the relevant performance measure and the baseline for that measure. (34 CFR 77.1)

Baseline means the starting point from which performance is measured and targets are set. (34 CFR 77.1)

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes. (34 CFR 77.1)

English learner, when used with respect to an individual, means an individual—

(A) Who is aged 3 through 21;

(B) Who is enrolled or preparing to enroll in an elementary school or secondary school;

(C)(i) Who was not born in the United States or whose Native language is a language other than English;

(ii)(I) Who is a Native American or Alaska Native, or a Native resident of the outlying areas; and

(II) Who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

(iii) Who is migratory, whose Native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(D) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—

(i) The ability to meet the State's challenging State academic standards;

(ii) The ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) The opportunity to participate fully in society. (Section 8101 of the ESEA)

Language instruction educational program means an instruction course—

(A) In which an English learner is placed for the purpose of developing and attaining English proficiency, while meeting challenging State academic standards; and

(B) That may make instructional use of both English and a child's Native language to enable the child to develop and attain English proficiency, and may include the participation of English proficient children if such course is designed to enable all participating children to become proficient in English and a second language. (Section 3201 of the ESEA)

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes. (34 CFR 77.1)

Note: Applicants may use resources such as the Pacific Education Laboratory's Education Logic Model Application (*https://ies.ed.gov/ncee/edlabs/regions/pacific/elm.asp* or *https://eric.ed.gov/?id=ED544752*) to help design their logic models.

Native Hawaiian or Native American Pacific Islander Native language educational organization means a nonprofit organization with—

(A) A majority of its governing board and employees consisting of fluent speakers of the traditional Native American languages used in the organization's educational programs; and

(B) Not less than 5 years successful experience in providing educational services in traditional Native American languages. (Section 3201 of the ESEA)

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project. (34 CFR 77.1)

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers). (34 CFR 77.1)

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program. (34 CFR 77.1)

Tribally Sanctioned Educational Authority means

(A) any department or division of education operating within the administrative structure of the duly constituted governing body of an Indian tribe; and

(B) any nonprofit institution or organization that is—

(i) chartered by the governing body of an Indian tribe to operate a school described in section 3112(a) of the ESEA or otherwise to oversee the delivery of educational services to members of the tribe; and

(ii) approved by the Secretary for the purpose of carrying out programs under subpart 1 of part A of the ESEA for individuals served by a school described in section 3112(a) of the ESEA. (Section 3201 of the ESEA).

Program Authority: 20 U.S.C. 6822.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474. (d) The Supplemental Priorities.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,100,000.

Estimated Range of Awards: $275,000–325,000 per year.

Estimated Average Size of Awards: $300,000.

Estimated Number of Awards: 7.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* The following entities, when they operate elementary, secondary, or postsecondary schools predominately for Native American children (including Alaska Native

children), are eligible applicants under this program:

(a) Indian Tribes.

(b) Tribally sanctioned educational authorities.

(c) Native Hawaiian or Native American Pacific Islander Native language educational organizations.

(d) Elementary schools or secondary schools that are operated or funded by the Department of the Interior's Bureau of Indian Education, or a consortium of these schools.

(e) Elementary schools or secondary schools operated under a contract with or grant from the Bureau of Indian Education in consortium with another such school or a Tribal or community organization.

(f) Elementary schools or secondary schools operated by the Bureau of Indian Education and an IHE, in consortium with an elementary school or secondary school operated under a contract with or a grant from the Bureau of Indian Education or a Tribal or community organization.

Note: Eligible applicants applying as a consortium should read and follow the regulations in 34 CFR 75.127 through 75.129.

Under section 3112(c) of the ESEA, EL students served under NAM grants must not be included in the child count submitted by a school district under ESEA section 3114(a) for purposes of receiving funding under the English Language Acquisition State Grants program.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. Supplement-Not-Supplant: This competition involves supplement-not-supplant funding requirements. As specified in section 3115(g) of the ESEA, funds awarded under this program are required to be used to supplement the level of Federal, State, and local public funds that, in the absence of such availability, would have been expended for programs for English learners and in no case to supplant such Federal, State, and local public funds.

c. *Indirect Cost Rate Information:* This program uses a restricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *https://www2.ed.gov/about/offices/list/ocfo/intro.html.*

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Equitable Participation by Private School Students and Educational Personnel in an ESEA Title III Program:* An entity that receives a grant under the NAM program must provide for the equitable participation of private school children and their teachers or other educational personnel. To ensure that grant program activities address the needs of private school children, the applicant must engage in timely and meaningful consultation with appropriate private school officials during the design and development of the program. This consultation must take place before the applicant makes any decision that affects the opportunities for participation by eligible private school children, teachers, and other educational personnel. Administrative direction and control over grant funds must remain with the grantee. (See section 8501 of the ESEA, Participation by Private School Children and Teachers.)

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs*, which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on December 27, 2021.

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 70 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(a) *Quality of the project design.* (Up to 40 points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(3) The extent to which the proposed project demonstrates a rationale (as defined in this notice).

(b) *Quality of project personnel.* (Up to 10 points)

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the following factors:

(1) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(2) The qualifications, including relevant training and experience, of key project personnel.

(c) *Quality of the management plan.* (Up to 30 points)

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(2) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(d) *Quality of the project evaluation.* (Up to 20 points)

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(2) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

2. *Review and Selection Process:* We remind potential applicants that, in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

The Department will screen applications that are submitted for NAM grants in accordance with the requirements in this notice and determine which applications meet the eligibility and other requirements. Peer reviewers will review all eligible applications for NAM grants that are submitted by the established deadline on the four selection criteria.

Applicants should note, however, that we may screen for eligibility at multiple points during the competition process, including before and after peer review; applicants that are determined to be ineligible will not receive a grant award regardless of peer reviewer scores or comments. If we determine that a NAM grant application does not meet a NAM eligibility requirement, the application will not be considered for funding.

3. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose special conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management (SAM). You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive

grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *https://www2.ed.gov/fund/grant/apply/appforms/appforms.html.* Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection, analysis, and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* The Department has developed the following performance measures for evaluating the overall effectiveness of the NAM program and for Department reporting under 34 CFR 75.110:

(a) *Measures.*

- *Measure 1:* The number and percentage of ELs served by the project who score proficient or above on the State reading assessment.
- *Measure 2:* The number and percentage of ELs served by the project who have attained proficiency in English as measured by the State-approved English language proficiency assessment.
- *Measure 3:* The number and percentage of students participating in the Native language program who are making progress in learning a Native language, as determined by each grantee, including through measures such as performance tasks, portfolios, and pre- and post-tests.

(b) *Baseline data.* Applicants must provide baseline data for each of the performance measures listed in paragraph (a) and include why each proposed baseline is valid; or, if the applicant has determined that there are no established baseline data for a particular performance measure, explain why there is no established baseline and explain how and when, during the project period, the applicant will establish a valid baseline for the performance measure.

(c) *Performance measure targets.* In addition, the applicant must propose in its application annual targets for the measures listed in paragraph (a). Applications must also include the following information as directed under 34 CFR 75.110(b) and (c):

(1) Why each proposed performance target (as defined in this notice) is ambitious (as defined in this notice) yet achievable compared to the baseline for the performance measure.

(2) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data.

(3) The applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

Note: If the applicant does not have experience with collection and reporting of performance data through other projects or research, the applicant should provide other evidence of capacity to successfully carry out data collection and reporting for its proposed project.

(d) *Performance reports.* All grantees must submit an annual performance report and final performance report with information that is responsive to these performance measures. The Department will consider these data in making annual continuation awards.

(1) The performance reports for all NAM 2023 grantees must include the following project performance data (34 CFR 75.253, 75.590, 75.591, and 75.720):

- The number of students who are eligible to participate in the program.
- The number of participants in the program.
- The number of participants who met the performance targets.

(e) *Department evaluations.* Consistent with 34 CFR 75.591, grantees funded under this program must comply with the requirements of any evaluation of the program conducted by the Department or an evaluator selected by the Department.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things, whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Montserrat Garibay,

Acting Assistant Deputy Secretary and Director, Office of English Language Acquisition.

[FR Doc. 2023–02736 Filed 2–8–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–493–000]

Tennessee Gas Pipeline Company, LLC; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Cumberland Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft Environmental Impact Statement (EIS) for the Cumberland Project (Project), proposed by Tennessee Gas Pipeline Company, LLC (Tennessee) in the above-referenced docket. Tennessee requests a Certificate of Public Convenience and Necessity to construct, operate, and maintain certain natural gas transmission pipeline and facilities in Dickson, Houston, and Stewart Counties, Tennessee. The Project purpose is to provide up to 245,040 dekatherms per day of new firm transportation service to the Tennessee Valley Authority's (TVA) Cumberland Natural Gas Combined Cycle Power Plant.

The draft EIS assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed Project, with the mitigation measures recommended in the EIS, would result in some adverse environmental impacts. Most of these impacts would be temporary and occur during construction (*e.g.,* impacts on wetlands, land use, traffic, and noise). Except for climate change impacts that are not characterized in the EIS as significant or insignificant, Commission staff conclude that project effects would not be significant. As part of the analysis, Commission staff developed specific mitigation measures (included in the draft EIS as recommendations). Staff recommend that these mitigation measures be attached as conditions to any authorization issued by the Commission.

The U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency participated as cooperating agencies in the preparation of the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by a proposal and participate in the NEPA analysis. Although both agencies provided input to the conclusions and recommendations presented in the draft EIS, each agency may present its own conclusions and recommendations in any applicable Records of Decision or other documentation for the Project.

The draft EIS addresses the potential environmental effects of the construction and operation of the following Project facilities, all in the state of Tennessee:

- *Cumberland Pipeline:* Construction of approximately 32 miles of new 30-inch-diameter natural gas pipeline, which would connect at Tennessee's existing Line 100–3 and Line 100–4. The Cumberland Pipeline would be located in Dickson, Houston, and Stewart Counties.
- *Pressure Regulation Station:* Construction of two new bi-directional back pressure regulation facilities on Line 100–3 and Line 100–4, at milepost 0.0 of the proposed new Cumberland Pipeline in Dickson County.
- *Cumberland Meter Station:* Construction of a new meter station at the terminus of the Cumberland Pipeline, located within TVA's property in Stewart County.
- *Launcher and Receiver:* Construction of in-line inspection traps, for in-line inspection tools at each end of the Cumberland Pipeline.
- *Mainline Valves:* Construction of three new mainline valves. One would be installed at an intermediate location along the Cumberland Pipeline, and the remaining two would be on Tennessee's Line 100–3 and Line 100–4 within the new Pressure Regulation Station.

The Commission mailed a copy of the *Notice of Availability of the Draft Environmental Impact Statement for the Proposed Cumberland Project* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the Project area. The draft EIS is only available in electronic format. It may be viewed and downloaded from the FERC website (*https://ferc.gov/*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environmental-overview/environmental-documents-2023*). In addition, the draft EIS may be accessed using the eLibrary link on the FERC website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*) select ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP22–493). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The draft EIS is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the draft EIS may do so. Your comments should focus on the draft EIS' disclosure and discussion of potential environmental effects, measures to avoid or lessen environmental impacts, and the completeness of the submitted alternatives, information and analyses. To ensure consideration of your comments on the proposal in the final EIS, it is important that the Commission receive your comments on or before 5:00 p.m. Eastern Time on March 27, 2023.

For your convenience, there are four methods you can use to submit your comments to the Commission. The Commission will provide equal consideration to all comments received, whether filed in written form or provided orally. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*https://ferc.gov/*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature on the Commission's website (*https://ferc.gov/*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the Project docket number (CP22–493–000) on your letter. 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, MD 20852.

(4) In lieu of sending written or electronic comments, the Commission invites you to attend one of the public comment sessions its staff will conduct to receive comments on the draft EIS, scheduled as follows:

Date	Time	Location
2/21/2023	5:00–8:00 p.m. Central Standard Time	Events on Main, 105 S Main Street, Dickson, TN 37055, (615) 202–3453.
2/22/2023	5:00–8:00 p.m. Central Standard Time	Cumberland City Fire Hall, 121 Main Street, Cumberland City, TN 37050, (931) 627–4610.

The primary goal of these comment sessions is to have you identify the specific environmental issues and concerns regarding the draft EIS. Individual oral comments will be taken on a one-on-one basis with a court reporter. This format is designed to receive the maximum amount of oral comments, in a convenient way during the timeframe allotted.

Each comment session is scheduled from 5:00 p.m. to 8:00 p.m. Central Standard Time. You may arrive at any time after 5:00 p.m. There will not be a formal presentation by Commission staff when the session opens. If you wish to speak, the Commission staff will hand out numbers in the order of your arrival. Comments will be taken until 8:00 p.m. However, if no additional numbers have been handed out and all individuals who wish to provide comments have had an opportunity to do so, staff may conclude the session at 7:30 p.m. Please see attachment 1 for additional information on the session format and conduct.[1]

Your oral comments will be recorded by the court reporter (with FERC staff or representative present) and become part of the public record for this proceeding. Transcripts will be publicly available on FERC's eLibrary system (see page 2 for instructions on using eLibrary). If a significant number of people are interested in providing oral comments in the one-on-one settings, a time limit of 5 minutes may be implemented for each commentor. Although there will not be a formal presentation, Commission staff will be available throughout the comment session to answer your questions about the environmental review process.

It is important to note that the Commission provides equal consideration to all comments received, whether filed in written form or provided at a comment session.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *https://www.ferc.gov/how-intervene.* Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Questions?

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in the specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: February 3, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–02748 Filed 2–8–23; 8:45 am]

BILLING CODE 6717–01–P

[1] The attachment referenced in this notice will not appear in the **Federal Register**. A copy of the attachment was sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–29–000]

Saguaro Connector Pipeline, L.L.C.; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Border Facilities Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document, that will discuss the environmental impacts of the Border Facilities Project (Project) involving construction and operation of facilities by Saguaro Pipeline Connector, L.L.C. (Saguaro) in Hudspeth County, Texas. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public interest.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of an authorization. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on March

6, 2023. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on December 20, 2022, you will need to file those comments in Docket No. CP23–29–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

Saguaro provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas Questions or Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP23–29–000) on your letter. 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.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Proposed Project

Saguaro proposes to site, construct, connect, operate, and maintain a 48-inch in-diameter natural gas pipeline from the United States (U.S.) to the Estados Unidos Mexicanos (Mexico) International Border in Hudspeth County, Texas. The section under the jurisdiction of the Commission extends from approximately 1,000 feet on State of Texas land to the U.S.-Mexico international border in the middle of the Rio Grande River. The 48-inch-diameter pipeline segment from a point approximately 1,000 feet in Hudspeth County to the international border is referred to as the ''Border Facilities.'' The Border Facilities would be interconnected to the NewCo Mexico Pipeline on the Mexico side of the Rio Grande River and to approximately 155 miles of non-FERC jurisdictional intrastate pipeline in Texas, which would have a design capacity of 2.834 billion standard cubic feet of natural gas per day for the entire length of the Border facilities and non-jurisdictional intrastate pipeline. According to Saguaro, the Border Facilities interconnect would allow for natural gas produced in Texas to be exported to a natural gas facility in Mexico.

The Border Facilities would consist of the following components:

- approximately 1,000 feet of 48-inch in-diameter pipeline;
- 50-foot-wide permanent easement;
- Additional temporary workspaces (total of 14.2 acres) and
- 6.9 miles of temporary access road (Indian Hot Springs Road).

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

The Project would affect approximately 35.5 acres of land during construction, of which 34.4 acres would be restored. The remaining 1.1 acre, which includes a 50-foot-wide permanent easement for the approximately 1,000 feet of 48-inch-diameter pipeline, would be used for operation of the Project. The entire Border Facilities would be in a greenfield (new construction) and there would be no aboveground facilities associated. In the application, Saguaro indicates that it would also construct and own new pipeline facilities (approximately 155 miles of 48-inch-diameter intrastate pipeline, two new compressor stations, one new meter station, approximately five launchers and receivers, and approximately seven mainline valve sites) that are not under FERC jurisdiction. These facilities are located in Pecos, Reeves, Jeff Davis, and Culberson counties, Texas. Although FERC does not have regulatory authority to modify or deny the construction of these facilities, we will disclose available information regarding the construction impacts in our environmental document.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas, as applicable:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- socioeconomics;
- air quality and noise;
- cumulative impacts; and

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov,* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/ Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary [2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP23–29–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: February 3, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–02749 Filed 2–8–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #3

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1910–027; ER10–1911–027.

Applicants: Duquesne Power, LLC, Duquesne Light Company.

Description: Triennial Market Power Analysis for Northeast Region of Duquesne Light Company, et al.

Filed Date: 2/3/23.

Accession Number: 20230203–5148.

Comment Date: 5 p.m. ET 4/4/23.

Docket Numbers: ER23–607–000.

Applicants: K2SO, LLC.

Description: Supplement to December 12, 2022 K2SO, LLC baseline tariff filing.

Filed Date: 2/3/23.

Accession Number: 20230203–5105.

Comment Date: 5 p.m. ET 2/13/23.

Docket Numbers: ER23–1047–000.

Applicants: Duke Energy Florida, LLC.

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[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Section 1501.8.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Description: § 205(d) Rate Filing: DEF–FPL SA No. 393 Concurrence to FCA for Affected System to be effective 1/18/2023.
Filed Date: 2/3/23.
Accession Number: 20230203–5129.
Comment Date: 5 p.m. ET 2/24/23.

Docket Numbers: ER23–1048–000.
Applicants: Lockhart ESS, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 4/5/2023.
Filed Date: 2/3/23.
Accession Number: 20230203–5138.
Comment Date: 5 p.m. ET 2/24/23.

Docket Numbers: ER23–1049–000.
Applicants: Public Service Company of Oklahoma.
Description: Tariff Amendment: Rate Schedule 305 to be effective 5/22/2022.
Filed Date: 2/3/23.
Accession Number: 20230203–5176.
Comment Date: 5 p.m. ET 2/24/23.

Docket Numbers: ER23–1050–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2023–02–03_SA 3989 METC-New Covert GIA to be effective 6/1/2023.
Filed Date: 2/3/23.
Accession Number: 20230203–5183.
Comment Date: 5 p.m. ET 2/24/23.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH23–3–000.
Applicants: LS Power Development, LLC.
Description: LS Power Development, LLC submits FERC 65–B Notice of Change in Fact to Waiver Notification.
Filed Date: 2/3/23.
Accession Number: 20230203–5137.
Comment Date: 5 p.m. ET 2/24/23.

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: February 3, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–02764 Filed 2–8–23; 8:45 am]

BILLING CODE 6717–01–P

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: RP23–418–000.
Applicants: Rover Pipeline LLC.
Description: § 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements on 2–2–23 to be effective 2/1/2023.
Filed Date: 2/2/23.
Accession Number: 20230202–5089.
Comment Date: 5 p.m. ET 2/14/23.

Docket Numbers: RP23–419–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Texas Eastern Transmission, LP submits tariff filing per 154.204: Non-conforming Agreements—NextEra 911890 and 911892 to be effective 2/1/2023.
Filed Date: 2/2/23.
Accession Number: 20230202–5106.
Comment Date: 5 p.m. ET 2/14/23.

Docket Numbers: RP23–420–000.
Applicants: Equitrans, L.P.
Description: Compliance filing: Equitrans, L.P. submits tariff filing per 154.203: Penalty Revenue Crediting Report to be effective N/A.
Filed Date: 2/3/23.
Accession Number: 20230203–5005.
Comment Date: 5 p.m. ET 2/15/23.

Docket Numbers: RP23–421–000.
Applicants: Great Basin Gas Transmission Company.
Description: § 4(d) Rate Filing: Tariff Preliminary Statement for new Baseline Tariff to be effective 1/23/2023.
Filed Date: 2/3/23.
Accession Number: 20230203–5084.
Comment Date: 5 p.m. ET 2/15/23.

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.

Filings in Existing Proceedings

Docket Numbers: PR22–70–001.
Applicants: BBT Bamagas Intrastate, LLC.
Description: Rate Filing: BBT Bamagas Intrastate Amended PR22–70 Filing to be effective 9/27/2022.
Filed Date: 2/3/23.
Accession Number: 20230203–5085.
Comment Date: 5 p.m. ET 2/24/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

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: February 3, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–02765 Filed 2–8–23; 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 Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23–29–000.
Applicants: Invenergy Energy Management LLC v. *PJM Interconnection, L.L.C.*
Description: Complaint of *Invenergy Energy Management LLC* v. *PJM Interconnection, L.L.C.*
Filed Date: 2/1/23.
Accession Number: 0230201–5246.
Comment Date: 5 p.m. ET 2/21/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1529–006; ER10–2472–009; ER10–2473–009; ER10–2502–010; ER11–2724–010; ER11–4436–008; ER18–2518–005; ER19–645–004.
Applicants: Black Hills Colorado Wind, LLC, Black Hills Electric Generation, LLC, Black Hills Power, Inc., Black Hills Colorado IPP, LLC, Black Hills Colorado Electric, LLC, Cheyenne Light, Fuel and Power

Company, Black Hills Wyoming, LLC, Northern Iowa Windpower, LLC.

Description: Notice of Non-Material Change in Status of Northern Iowa Windpower, LLC, et al.

Filed Date: 1/31/23.

Accession Number: 20230131–5512.

Comment Date: 5 p.m. ET 2/21/23.

Docket Numbers: ER10–1838–010; ER19–2231–007; ER19–2232–007; ER10–1967–011; ER10–1968–010; ER10–1616–018; ER23–367–001; ER23–368–001; ER23–369–001; ER22–46–006; ER22–1402–003; ER22–1404–003; ER19–1738–005; ER10–1990–010; ER18–1821–010; ER10–1993–010.

Applicants: Waymart Wind Farm, LLC, Walleye Power, LLC, Somerset Windpower, LLC, Parkway Generation Sewaren Urban Renewal Entity LLC, Parkway Generation Operating LLC, Parkway Generation Keys Energy Center LLC, Parkway Generation Essex, LLC, OnPoint Energy Pennsylvania, LLC, OnPoint Energy Ohio LLC, OnPoint Energy Illinois, LLC, New Covert Generating Company, LLC, Mill Run Windpower, LLC, Meyersdale Windpower LLC, Chief Keystone Power II, LLC, Chief Conemaugh Power II, LLC.

Description: Notice of Change in Status of Backbone Mountain Windpower LLC, et al.

Filed Date: 1/31/23.

Accession Number: 20230131–5506.

Comment Date: 5 p.m. ET 2/21/23.

Docket Numbers: ER10–2042–043; ER10–1858–011; ER10–1862–037; ER10–1863–012; ER10–1865–017; ER10–1870–011; ER10–1871–012; ER10–1873–017; ER10–1875–017; ER10–1876–018; ER10–1877–011; ER10–1878–017; ER10–1883–017; ER10–1884–017; ER10–1885–017; ER10–1888–017; ER10–1889–011; ER10–1893–037; ER10–1895–011; ER10–1934–037; ER10–1938–038; ER10–1941–017; ER10–1942–035; ER10–1944–011; ER10–1947–018; ER10–2029–015; ER10–2036–014; ER10–2040–013; ER10–2041–013; ER10–2043–013; ER10–2044–013; ER10–2051–013; ER10–2985–041; ER10–3049–042; ER10–3051–042; ER10–3260–013; ER11–4369–022; ER12–1987–015; ER12–2261–016; ER12–2645–010; ER13–1401–011; ER13–1407–013; ER14–2931–011; ER16–2218–023; ER17–696–023; ER18–1321–006; ER19–1127–007; ER20–1699–005; ER20–1939–004.

Applicants: Calpine Northeast Development, LLC, Johanna Energy Center, LLC, Calpine King City Cogen, LLC, Calpine Mid-Merit II, LLC, Calpine Energy Solutions, LLC, North American Power Business, LLC, Calpine Fore River Energy Center, LLC, CCFC Sutter Energy, LLC, Westbrook Energy Center, LLC, Pastoria Energy Facility L.L.C., Russell City Energy Company, LLC, O.L.S. Energy-Agnews, Inc., North American Power and Gas, LLC, Granite Ridge Energy, LLC, Champion Energy, LLC, Champion Energy Services, LLC, Champion Energy Marketing LLC, Calpine Bethlehem, LLC, Zion Energy LLC, Calpine Mid-Atlantic Generation, LLC, Calpine Mid Merit, LLC, Calpine New Jersey Generation, LLC, Calpine Vineland Solar, LLC, Calpine Mid-Atlantic Marketing, LLC, Otay Mesa Energy Center, LLC, Bethpage Energy Center 3, LLC, Calpine Construction Finance Company, L.P., Calpine Gilroy Cogen, L.P., Calpine Power America—CA, LLC, CES Marketing IX, LLC, KIAC Partners, CES Marketing X, LLC, CPN Bethpage 3rd Turbine, Inc., Creed Energy Center, LLC, Delta Energy Center, LLC, Geysers Power Company, LLC, Gilroy Energy Center, LLC, Goose Haven Energy Center, LLC, Hermiston Power, LLC, Los Esteros Critical Energy Facility, LLC, Los Medanos Energy Center LLC, Metcalf Energy Center, LLC, Morgan Energy Center, LLC, Nissequogue Cogen Partners, South Point Energy Center, LLC, Pine Bluff Energy, LLC, Power Contract Financing, L.L.C., TBG Cogen Partners, Calpine Energy Services, L.P.

Description: Notice of Change in Status of Calpine Energy Services, L.P., et al. under ER10–2042, et al.

Filed Date: 1/31/23.

Accession Number: 20230131–5508.

Comment Date: 5 p.m. ET 2/21/23.

Docket Numbers: ER11–3859–023; ER14–1154–002; ER14–1699–013; ER18–1990–004; ER18–2399–004; ER19–1194–003.

Applicants: Canal 3 Generating LLC, Canal Generating LLC, Stonepeak Kestrel Energy Marketing LLC, Milford Power, LLC, Bucksport Power LLC, Dighton Power, LLC.

Description: Notice of Change in Status of Dighton Power, LLC, et al.

Filed Date: 1/31/23.

Accession Number: 20230131–5511.

Comment Date: 5 p.m. ET 2/21/23.

Docket Numbers: ER11–4636–005.

Applicants: Portland General Electric Company.

Description: Compliance filing: Avista Corporation submits tariff filing per 35: First Amendment Amended and Restated Colstrip Project to be effective 2/2/2023.

Filed Date: 2/3/23.

Accession Number: 20230203–5001.

Comment Date: 5 p.m. ET 2/24/23.

Docket Numbers: ER13–2386–008; ER10–2847–007; ER14–963–007.

Applicants: TransAlta Wyoming Wind LLC, TransAlta Centralia Generation LLC, Lakeswind Power Partners, LLC.

Description: Notice of Change in Status of Lakeswind Power Partners, LLC, et al.

Filed Date: 1/31/23.

Accession Number: 20230131–5507.

Comment Date: 5 p.m. ET 2/21/23.

Docket Numbers: ER15–1332–011; ER17–1314–005; ER10–2398–013; ER10–2399–013; ER10–2400–017; ER10–2401–011; ER10–2402–010; ER11–3414–011; ER19–1280–006; ER10–2403–011; ER17–2541–003; ER10–2423–012; ER10–2404–012; ER14–1933–013; ER20–2714–004; ER10–2405–014; ER10–2406–014; ER17–2087–009; ER21–714–006; ER16–1152–006; ER19–1281–007; ER14–1594–007; ER14–1596–007; ER10–2407–010; ER10–2408–008; ER10–2409–013; ER10–2410–013; ER10–2411–014; ER10–2412–014; ER17–1315–011; ER18–1189–008; ER10–2414–019; ER11–2935–015; ER16–1724–011; ER19–1282–006; ER10–2425–012; ER18–1188–006; ER17–1316–008; ER10–2424–010; ER17–1318–007; ER14–1934–008; ER14–1935–008; ER15–1020–006; ER20–2746–005; ER19–2626–005; ER20–245–004; ER20–242–004; ER18–1186–007; ER15–1333–010; ER20–246–004.

Applicants: Windhub Solar A, LLC, Waverly Wind Farm LLC, Turtle Creek Wind Farm LLC, Sunshine Valley Solar, LLC, Sun Streams, LLC, Rosewater Wind Farm LLC, Riverstart Solar Park LLC, Rising Tree Wind Farm III LLC, Rising Tree Wind Farm II LLC, Rising Tree Wind Farm LLC, Redbed Plains Wind Farm LLC, Rail Splitter Wind Farm, LLC, Quilt Block Wind Farm LLC, Prairie Queen Wind Farm LLC, Pioneer Prairie Wind Farm I, LLC, Paulding Wind Farm IV LLC, Paulding Wind Farm III LLC, Paulding Wind Farm II LLC, Old Trail Wind Farm, LLC, Meadow Lake Wind Farm VI LLC, Meadow Lake Wind Farm V LLC, Meadow Lake Wind Farm IV LLC, Meadow Lake Wind Farm III LLC, Meadow Lake Wind Farm II LLC, Meadow Lake Wind Farm LLC, Marble River, LLC, Lost Lakes Wind Farm LLC, Lone Valley Solar Park II LLC, Lone Valley Solar Park I LLC, Lexington Chenoa Wind Farm LLC, Jericho Rise Wind Farm LLC, Indiana Crossroads Wind Farm LLC, Hog Creek Wind Project, LLC, High Trail Wind Farm, LLC, High Prairie Wind Farm II, LLC, Headwaters Wind Farm II LLC, Headwaters Wind Farm LLC, Flat Rock Windpower II LLC, Flat Rock Windpower LLC, Estill Solar I, LLC, Cloud County Wind Farm, LLC, Broadlands Wind Farm LLC, Blue

Canyon Windpower VI LLC, Blue Canyon Windpower V LLC, Blue Canyon Windpower II LLC, Blue Canyon Windpower LLC, Blackstone Wind Farm II LLC, Blackstone Wind Farm, LLC, Arkwright Summit Wind Farm LLC, Arbuckle Mountain Wind Farm LLC.

Description: Notice of Non-Material Change in Status of Arbuckle Mountain Wind Farm LLC, et al.

Filed Date: 1/31/23.

Accession Number: 20230131–5505.

Comment Date: 5 p.m. ET 2/21/23.

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: February 3, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–02763 Filed 2–8–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–1742–007; ER21–2406–004; ER20–2510–005; ER13–2490–011; ER22–734–003; ER19–2671–006; ER19–2672–006; ER20–2512–005; ER22–2424–001; ER22–2427–001; ER22–2425–001; ER22–2421–001; ER22–2423–001; ER20–2515–005; ER21–2407–004; ER22–2028–002; ER19–2595–006; ER21–2408–004; ER22–2426–001; ER22–2428–001; ER19–2670–006; ER19–53–003; ER21–2638–004; ER20–2455–002; ER20–2595–002; ER20–2663–005; ER21–2409–004; ER17–311–007; ER20–1073–005; ER22–2422–001.

Applicants: SR Turkey Creek, LLC, SR Terrell, LLC, SR South Loving LLC, SR Snipesville II, LLC, SR Snipesville, LLC, SR Rattlesnake, LLC, SR Platte, LLC, SR Perry, LLC, SR Millington, LLC, SR Meridian III, LLC, SR McKellar Lessee, LLC, SR McKellar, LLC, SR Lumpkin, LLC, SR Hazlehurst III, LLC, SR Hazlehurst, LLC, SR Georgia Portfolio II Lessee, LLC, SR Georgia Portfolio I MT, LLC, SR DeSoto I Lessee, LLC, SR DeSoto I, LLC, SR Clay, LLC, SR Cedar Springs, LLC, SR Bell Buckle, LLC, SR Baxley, LLC, SR Arlington II MT, LLC, SR Arlington II, LLC, SR Arlington, LLC, Simon Solar, LLC, Odom Solar LLC, Lancaster Solar LLC, Hattiesburg Farm, LLC.

Description: Notice of Non-Material Change in Status of Hattiesburg Farm, LLC, et al.

Filed Date: 1/30/23.

Accession Number: 20230130–5304.

Comment Date: 5 p.m. ET 2/21/23.

Docket Numbers: ER20–1790–002; ER11–4498–014; ER11–4499–014; ER11–4501–016; ER12–979–015; ER12–2448–015; ER13–2409–010; ER14–2858–009; ER15–2615–005; ER15–2620–005; ER16–2293–006; ER16–2577–005; ER16–2687–004; ER17–790–003; ER17–2457–005; ER17–2470–005; ER18–27–004; ER18–2312–004; ER18–2330–003; ER20–2134–002; ER21–2597–002.

Applicants: Rockhaven Wind Project, LLC, Cimarron Bend Wind Project III, LLC, Enel Green Power Rattlesnake Creek Wind Project, LLC, Enel Green Power Diamond Vista Wind Project, LLC, Thunder Ranch Wind Project, LLC, Red Dirt Wind Project, LLC, Rock Creek Wind Project, LLC, Cimarron Bend Wind Project II, LLC, Chisholm View Wind Project II, LLC, Cimarron Bend Wind Project I, LLC, Lindahl Wind Project, LLC, Drift Sand Wind Project, LLC, Little Elk Wind Project, LLC, Goodwell Wind Project, LLC, Origin Wind Energy, LLC, Buffalo Dunes Wind Project, LLC, Chisholm View Wind Project, LLC, Rocky Ridge Wind Project, LLC, Caney River Wind Project, LLC, Smoky Hills Wind Project II, LLC, Smoky Hills Wind Farm, LLC, Aurora Wind Project, LLC.

Description: Notice of Change in Status of Aurora Wind Project, LLC, et al.

Filed Date: 1/31/23.

Accession Number: 20230131–5510.

Comment Date: 5 p.m. ET 2/21/23.

Docket Numbers: ER22–1627–002; ER10–1427–005; ER10–2466–023; ER10–2895–025; ER10–2921–025; ER10–2966–025; ER10–3167–018; ER11–2201–028; ER11–4029–022; ER12–645–027; ER12–1311–022; ER12–2068–022; ER13–203–017; ER13–1139–024; ER13–1346–014; ER13–1613–018; ER13–2143–018; ER14–25–021; ER14–1964–016; ER14–2630–017; ER17–482–010; ER19–529–011; ER19–1074–011; ER19–1075–011; ER20–1447–006; ER20–1806–005; ER22–192–005; ER22–1010–003.

Applicants: TerraForm IWG Acquisition Holdings II, LLC, Evolugen Trading and Marketing LP, Catalyst Old River Hydroelectric Limited Partnership, Brookfield Energy Marketing US LLC, Brookfield Renewable Energy Marketing US LLC, Brookfield Energy Marketing Inc., Brookfield Renewable Trading and Marketing LP, BREG Aggregator LLC, Regulus Solar, LLC, BIF II Safe Harbor Holdings, LLC, Prairie Breeze Wind Energy LLC, Black Bear Development Holdings, LLC, Brookfield White Pine Hydro LLC, Mesa Wind Power LLC, Imperial Valley Solar 1, LLC, Black Bear SO, LLC, Blue Sky East, LLC, Stetson Holdings, LLC, California Ridge Wind Energy LLC, Vermont Wind, LLC, Evergreen Wind Power III, LLC, Black Bear Hydro Partners, LLC, Rumford Falls Hydro LLC, Great Lakes Hydro America, LLC, Bear Swamp Power Company LLC, Stetson Wind II, LLC, Brookfield Energy Marketing LP, AM Wind Repower LLC.

Description: Notice of Non-Material Change in Status of AM Wind Repower LLC, et al.

Filed Date: 1/31/23.

Accession Number: 20230131–5509.

Comment Date: 5 p.m. ET 2/21/23.

Docket Numbers: ER22–2161–001.

Applicants: Golden Spread Electric Cooperative, Inc.

Description: Compliance filing: 881 Compliance Filing—Effective Date clarification to be effective 7/12/2025.

Filed Date: 2/3/23.

Accession Number: 20230203–5014.

Comment Date: 5 p.m. ET 2/24/23.

Docket Numbers: ER22–2162–001.

Applicants: Deseret Generation & Transmission Co-operative, Inc.

Description: Compliance filing: Effective Date Clarification 881 Compliance Filing to be effective 7/12/2025.

Filed Date: 2/3/23.

Accession Number: 20230203–5028.

Comment Date: 5 p.m. ET 2/24/23.

Docket Numbers: ER23–643–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Request to Defer Action-Amendment to ISA, SA No. 5596; Queue No. AD1–020 to be effective 12/31/9998.

Filed Date: 2/2/23.

Accession Number: 20230202–5111.

Comment Date: 5 p.m. ET 2/23/23.

Docket Numbers: ER23–1033–000.
Applicants: New England Power Company.
Description: Tariff Amendment: 2023–02–01 Notice of Cancellation of LGIA with Deepwater Block Island Wind to be effective 1/1/2023.
Filed Date: 2/1/23.
Accession Number: 20230201–5191.
Comment Date: 5 p.m. ET 2/22/23.

Docket Numbers: ER23–1041–000.
Applicants: Florida Power & Light Company.
Description: § 205(d) Rate Filing: FPL Amendment to NITSA No. 332 with GTC to be effective 1/4/2023.
Filed Date: 2/3/23.
Accession Number: 20230203–5002.
Comment Date: 5 p.m. ET 2/24/23.

Docket Numbers: ER23–1042–000.
Applicants: Florida Power & Light Company.
Description: § 205(d) Rate Filing: FCA for Affected System Project Between FPL and DEF Q285 to be effective 1/18/2023.
Filed Date: 2/3/23.
Accession Number: 20230203–5003.
Comment Date: 5 p.m. ET 2/24/23.

Docket Numbers: ER23–1043–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 1442; Queue No. NQ–123 (amend) to be effective 1/19/2023.
Filed Date: 2/3/23.
Accession Number: 20230203–5017.
Comment Date: 5 p.m. ET 2/24/23.

Docket Numbers: ER23–1044–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6766; Queue No. AE2–241 to be effective 1/4/2023.
Filed Date: 2/3/23.
Accession Number: 20230203–5027.
Comment Date: 5 p.m. ET 2/24/23.

Docket Numbers: ER23–1045–000.
Applicants: Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Duke Energy Ohio, Inc. submits tariff filing per 35.13(a)(2)(iii): DEOK submits revisions to OATT Att. H–22A Depreciation Rates to be effective 1/1/2023.
Filed Date: 2/3/23.
Accession Number: 20230203–5086.
Comment Date: 5 p.m. ET 2/24/23.

Docket Numbers: ER23–1046–000.
Applicants: Nittany Energy, LLC.
Description: Notice of Cancellation of Market Based Rate Tariff of Nittany Energy, LLC.
Filed Date: 2/2/23.
Accession Number: 20230202–5149.
Comment Date: 5 p.m. ET 2/23/23.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF23–284–000.
Applicants: WED Coventry Five, LLC.
Description: Refund Report of WED Coventry Five, LLC.
Filed Date: 2/1/23.
Accession Number: 20230201–5265.
Comment Date: 5 p.m. ET 2/22/23.

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: February 3, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–02762 Filed 2–8–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6066–039]

McCallum Enterprises I, Limited Partnership; Notice of Application for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following amendment application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.
b. *Project No:* P–6066–039.
c. *Date Filed:* June 25, 2021.
d. *Applicants:* McCallum Enterprises I, Limited Partnership and Shelton Canal Company (licensees).
e. *Name of Projects:* Derby Dam Hydroelectric Project.
f. *Locations:* The project is located on the Housatonic River in New Haven and Fairfield counties, Connecticut.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.
h. *Applicant Contact:* Mr. Joseph W. Szarmach, Jr., Managing Partner, McCallum Enterprises I, Limited Partnership, 2874 Main Street, Stratford, CT 06614; telephone: (203) 386–1745 and email *joseph.szarmach@gmail.com.*
i. *FERC Contact:* Marybeth Gay, (202) 502–6125, *Marybeth.Gay@ferc.gov.*
j. *Deadline for filing comments, motions to intervene, and protests:* March 6, 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–6066–039. 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:* The licensees propose to amend the license to remove the Derby Development from the project description, and to revise the project boundary to remove the Derby powerhouse, Derby canal, and tailrace. The canal gatehouse serves as a water

retaining structure and contributes to the ability to maintain the impoundment and would, therefore, remain within the project boundary. Due to non-project oil contamination, the licensees previously ceased operation at the Derby Development, in cooperation with the U.S. Environmental Protection Agency (EPA). The EPA would permanently fill and abandon in place the water passage system associated with the hydroelectric facilities, and the licensees have removed the turbine to permit the EPA's access and remediation activities. The removal of the non-operational facility would result in a decrease in authorized capacity from 8.5 megawatts (MW) to 7.8 MW.

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: February 3, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–02750 Filed 2–8–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2023–0046; FRL–10610–01–OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with the Clean Air Act, as amended (CAA or the Act), notice is given of a proposed consent decree in *Environmental Integrity Project, et al.* v. *Regan,* No. 1:22–cv–2243 (D.D.C). On July 29, 2022, Plaintiffs Environmental Integrity Project, Chesapeake Climate Action Network, and Sierra Club filed a complaint in the United States District Court for the District of Columbia, alleging that the Environmental Protection Agency (EPA or the Agency) failed to perform certain non-discretionary duties in accordance with the Act to timely review and, if necessary, revise, the methods (''emission factors'') used to estimate the quantity of emissions of carbon monoxide, volatile organic compounds, and oxides of nitrogen for municipal solid waste landfills. EPA is providing notice of this proposed consent decree, which would resolve all claims in the case by establishing deadlines for EPA to review and, if necessary, revise these emission factors for municipal solid waste landfills.

DATES: Written comments on the proposed consent decree must be received by March 13, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2023–0046, online at *https://www.regulations.gov* (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Additional Information about Commenting on the Proposed Consent Decree'' heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Hali Kerr, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone (202) 564–2286; email address *Kerr.Hali@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Consent Decree

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2023–0046) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center 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 OEI Docket is (202) 566–1752.

The electronic version of the public docket for this action contains a copy of the proposed consent decree and is available through *https://www.regulations.gov.* You may use *https://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.''

II. Additional Information About the Proposed Consent Decree

On July 29, 2022, Plaintiffs Environmental Integrity Project, Chesapeake Climate Action Network, and Sierra Club filed a complaint in the United States District Court for the District of Columbia, alleging that the Environmental Protection Agency failed to perform certain non-discretionary duties in accordance with the Act to timely review and, if necessary, revise,

the methods (''emission factors'') used to estimate the quantity of emissions of carbon monoxide, volatile organic compounds, and oxides of nitrogen under CAA section 130, 42 U.S.C. 7430, for municipal solid waste landfills. The proposed consent decree would establish deadlines for EPA to review and, if necessary, revise these emission factors for municipal solid waste landfills.

EPA is agreeing to issue draft revisions to these emission factors (or issue a draft determination that revision is not necessary) by January 15, 2024. EPA is also agreeing to issue final revisions to the emission factors (or issue a final determination that revision is not necessary) by August 15, 2024. EPA will update its AP–42 website, where EPA maintains its Compilation of Air Pollutant Emission Factors, with the emission factors (or determinations) for municipal solid waste landfills.

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the proposed consent decree. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

III. Additional Information About Commenting on the Proposed Consent Decree

Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2023–0046, via *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *https://www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider such late comments.

Gautam Srinivasan,

Associate General Counsel.

[FR Doc. 2023–02776 Filed 2–8–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 17–208; FR ID 126457]

Meeting of the Communications Equity and Diversity Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces the February 23, 2023, meeting of the Federal Communications Commission's (Commission) Communications Equity and Diversity Council (CEDC or Council).

DATES: Thursday, February 23, 2023, from 10:00 p.m. ET to 4:00 p.m. ET.

ADDRESSES: The CEDC meeting will be held virtually and be available to the public for viewing via the internet at *http://www.fcc.gov/live.*

FOR FURTHER INFORMATION CONTACT: Jamila Bess Johnson, Designated Federal Officer (DFO) of the CEDC, Media Bureau (202) 418–2608, *Jamila-Bess.Johnson@fcc.gov;* or Aurélie Mathieu, Attorney Advisor, Wireline Competition Bureau, at (202) 418–2194, *Aurelie.Mathieu@fcc.gov;* or Diana Coho, Consumer Affairs and Outreach Specialist, Consumer and Governmental Affairs Bureau, at (202) 418–2848, *Diana.Coho@fcc.gov.*

SUPPLEMENTARY INFORMATION: *Proposed Agenda:* The agenda for the meeting will include reports from each of the three CEDC working groups including Innovation and Access, Digital Empowerment and Inclusion, and Diversity and Equity. This agenda may be modified at the discretion of the CEDC Chair and the DFO.

The CEDC meeting will be accessible to the public on the internet via live feed from the Commission's web page at *www.fcc.gov/live.* Members of the public may submit questions during the meeting to *livequestions@fcc.gov.* Additionally, members of the public may submit comments to the CEDC using the FCC's Electronic Comment Filing System, ECFS, at *www.fcc.gov/ecfs.* Comments to the CEDC should be filed in GN Docket No. 17–208.

Open captioning will be provided for this event. Other reasonable accommodations for persons with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the Commission to contact the requester if more information is needed to fulfill the request. Please allow at least five days' notice; last minute requests will be accepted but may not be possible to accommodate.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

[FR Doc. 2023–02787 Filed 2–8–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research and Quality

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held on Monday, March 6, 2023, from 11:30 a.m. to 3:00 p.m.

ADDRESSES: The meeting will be held virtually.

FOR FURTHER INFORMATION CONTACT: Jaime Zimmerman, Designated Management Official, at the Agency for Healthcare Research and Quality, 5600 Fishers Lane, Mail Stop 06E37A, Rockville, Maryland 20857, (301) 427–1456. For press-related information, please contact Bruce Seeman at (301) 427–1998 or *Bruce.Seeman@AHRQ.hhs.gov.*

Closed captioning will be provided during the meeting. If another reasonable accommodation for a disability is needed, please contact the Food and Drug Administration (FDA) Office of Equal Employment Opportunity and Diversity Management on (301) 827–4840, no later than Monday, February 27, 2023. The agenda, roster, and minutes will be available from Jenny Griffith, Committee Management Officer, Agency for Healthcare Research and Quality, 5600 Fishers Lane, Rockville, Maryland 20857. Jenny Griffith's phone number is (240) 446–6799.

SUPPLEMENTARY INFORMATION:

I. Purpose

In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App., this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality (the Council). The Council is authorized by Section 941 of the Public Health Service Act, 42 U.S.C. 299c. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director of AHRQ on matters related to AHRQ's conduct of its mission including providing guidance on (A) priorities for health care research, (B) the field of health care research including training needs and information dissemination on health care quality and (C) the role of the Agency in light of private sector activity and opportunities for public private partnerships. The Council is composed of members of the public, appointed by the Secretary, and Federal ex-officio members specified in the authorizing legislation.

II. Agenda

On Monday, March 6, 2023, NAC members will meet to conduct preparatory work prior to convening the Council meeting at 11:30 a.m., with the call to order by the Council Chair, an introduction of NAC members, and approval of previous Council summary notes. The NAC members will then receive an update from the AHRQ Director, including a follow up discussion on private capital and engaging health system executive leadership. The agenda will also include (1) an update and discussion by NAC members on AHRQ's Patient Safety Framework and the Patient Safety Action Alliance's efforts to promote Safer Together: A National Patient Safety Action Plan and (2) a report out and discussion about Long Covid and addressing health system fragmentation. The meeting is open to the public and will adjourn at 3:00 p.m. For information regarding how to access the meeting as well as other meeting details, including information on how to make a public comment, please go to *https://www.ahrq.gov/news/events/nac/.* The final agenda will be available on the AHRQ website no later than Monday February 27, 2023.

Dated: February 3, 2023.

Marquita Cullom,

Associate Director.

[FR Doc. 2023–02724 Filed 2–8–23; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Docket No. ATSDR–2022–0006]

Availability of Four Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Agency for Toxic Substances and Disease Registry (ATSDR), within the Department of Health and Human Services (HHS), announces the opening of a docket to obtain comments on drafts of four updated toxicological profiles: Cobalt, Hexachlorocyclohexanes, 1,1,1-Trichloroethane, and Vinyl Chloride.

DATES: Written comments must be received on or before May 10, 2023.

ADDRESSES: You may submit comments, identified by Docket Number ATSDR–2022–0006, by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Toxicology Section, Office of Innovation and Analytics, Agency for Toxic Substances and Disease Registry, 4770 Buford Highway, Mail Stop S102–1, Atlanta, GA 30341–3717. Attn: Docket No. ATSDR–2022–0006.

Instructions: All submissions must include the Agency name and Docket Number. All relevant comments received will be posted without change to *www.regulations.gov,* including any personal information provided. Do not submit comments by email. ATSDR does not accept comments by email. For access to the docket to read background documents or comments received, go to *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: N. Roney, Agency for Toxic Substances and Disease Registry, 4770 Buford Highway, Mail Stop S102–1, Atlanta, GA 30329–4027; Email: *ATSDRToxProfileFRNs@cdc.gov;* Telephone: 800–232–4636.

SUPPLEMENTARY INFORMATION: ATSDR has prepared drafts of four updated toxicological profiles based on current understanding of the health effects and availability of new studies and other information since their initial release. All toxicological profiles issued as ''Drafts for Public Comment'' represent the result of ATSDR's evidence-based evaluations to provide important toxicological information on priority hazardous substances to the public and health professionals. ATSDR considers key studies for these substances during the profile development process, using a systematic review approach. To that end, ATSDR is seeking public comments and additional information or reports on studies about the health effects of these four substances for review and potential inclusion in the profiles. ATSDR will evaluate the quality and relevance of such data or studies for possible inclusion in the profile.

Public Participation

Interested persons or organizations are invited to participate by submitting written views, information, and data. Comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. Do not submit comments by email. ATSDR does not accept comments by email. ATSDR will review all submissions and may choose to redact or withhold submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. ATSDR will carefully review and consider all comments submitted in preparation of the Final Toxicological Profiles and may revise the profiles as appropriate.

Legislative Background

The Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9601 *et seq.*] amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) [42 U.S.C. 9601 *et seq.*] by establishing certain requirements for ATSDR and the U.S. Environmental Protection Agency (EPA) regarding the hazardous substances most commonly found at facilities on the CERCLA National Priorities List. Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority list of hazardous substances [also called the Substance Priority List (SPL)]. This list identifies 275 hazardous substances that ATSDR has determined pose the most significant potential threat to human health. The SPL is available online at *www.atsdr.cdc.gov/spl.* ATSDR is also mandated to revise and publish updated toxicological profiles, as necessary, to reflect updated health effects and other information.

In addition, CERCLA provides ATSDR with the authority to prepare toxicological profiles for substances not found on the SPL. CERCLA authorizes ATSDR to establish and maintain an inventory of literature, research, and studies on the health effects of toxic substances (CERCLA Section 104(i)(1)(B); 42 U.S.C. 9604(i)(1)(B)); to respond to requests for health consultations (CERCLA Section 104(i)(4); 42 U.S.C. 9604(i)(4)); and to support the site-specific response actions conducted by the agency (CERCLA Section 104(i)(6); 42 U.S.C. 9604(i)(6)). Public nominations for substances from the SPL (or other substances) for toxicological profile development were requested on April 18, 2018 (83 FR 17177).

ATSDR has now prepared drafts of four updated toxicological profiles based on current understanding of the health effects and availability of new studies and other information since their initial release.

Availability

The Draft Toxicological Profiles are available online at *www.regulations.gov,* Docket No. ATSDR–2022–0006 and at *www.atsdr.cdc.gov/ToxProfiles.*

Donata Green,

Acting Associate Director, Office of Policy, Planning and Partnerships, Agency for Toxic Substances and Disease Registry.

[FR Doc. 2023–02754 Filed 2–8–23; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), 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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 117–286. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—DP23–001, Panel B, Assessing the Effectiveness of Programs, Policies, or Practices that Affect Social Determinants of Health to Promote Health Equity and Reduce Health Disparities in Chronic Diseases.

Dates: April 19–20, 2023.

Times: 10:00 a.m.–6:00 p.m., EDT.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Catherine Barrett, Ph.D., Scientific Review Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, Mailstop S107–3, Atlanta, Georgia 30341–3717; Telephone: (770) 718–7664; Email: *CBarrett@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–02747 Filed 2–8–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2022–0003]

Policy Statement for Biosafety Level 4/Animal Biosafety Level 4 Laboratory Verification; Notice of Availability

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), in the Department of Health and Human Services (HHS), announces the availability and implementation of the final Biosafety Level 4 (BSL–4)/Animal BSL–4 (ABSL–4) verification policy. The policy statement assists individuals and entities in verifying that the facility design parameters and operational procedures, including heating, ventilation, and air conditioning (HVAC) systems, in BSL–4 and/or ABSL–4 laboratories are functioning as intended to meet the biosafety sufficiency requirement in the HHS/CDC select agent and toxin regulations.

DATES: The compliance date for this Policy is February 9, 2023.

FOR FURTHER INFORMATION CONTACT: Samuel S. Edwin Ph.D., Director, Division of Select Agents and Toxins, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H21–4, Atlanta, Georgia 30329. Telephone: (404) 718–2000. Email: *lrsat@cdc.gov.*

SUPPLEMENTARY INFORMATION: On January 19, 2022, CDC published a notice in the **Federal Register** (87 FR 2791) requesting public comment on a draft policy statement on BSL–4/ABSL–4 laboratory verifications standards, including HVAC, to aid individuals and entities in verifying that these laboratories are properly functioning. HHS/CDC received comment on the draft policy statement concerning BSL–4/ABSL–4 verification requirements from seven commenters. The commenters were from academia, industry, city/local government, and the public.

Summary of Public Comments

In general, commenters supported the draft policy but had specific suggestions on wording and revisions. Please see a summary of the comments and our responses below.

Comment: One commenter suggested changing the subject to include BSL–3 Agriculture.

Response: HHS/CDC notes that an established BSL–3/ABSL–3 Verification Policy already exists (*https://www.cdc.gov/cpr/ipp/docs/Policy_Import_BSL3_ABSL3_Verification.pdf*). Thus, HHS/CDC made no changes based on this comment.

Comment: One commenter recommended that Heating, Ventilation, and Air Conditioning (HVAC) be referred to as ''Building and Mechanical, Electrical, and Plumbing (MEP) systems.''

Response: HHS/CDC disagreed with this recommendation because the term ''HVAC'' is more universally referenced. No changes were made to the policy due to this comment.

Comment: HHS/CDC received comment regarding clarification and testing of the HVAC system only after major changes or every ten years.

Response: HHS/CDC agreed with the commenter to provide the clarification and has updated the policy to state that entities must ensure HVAC verification is performed and documented ''after major changes to ensure operational parameters are maintained.'' The policy includes examples of major changes that can be referenced. HHS/CDC disagreed with the other comments regarding increasing the testing requirement to every ten years.

Comment: A commenter discussed primary and secondary fans versus parallel HVAC fans and how setup depends on different facility configurations.

Response: HHS/CDC agreed with the comment about configuration of HVAC fans and included ''or failure of parallel fans depending on facility configuration'' in the policy.

Comment: Commenters requested that examples be provided for major changes and that HHS/CDC provide a list of repairs to HVAC control system components that require verification testing.

Response: HHS/CDC agreed with providing examples and has updated the policy to include examples of major changes that can be referenced. Modifications include repairs or replacing a component to the HVAC to ensure that the system is fully operational. HHS/CDC also revised the policy to state ''systems'' instead of ''components.'' Entities should ensure all HVAC systems are operational, and because systems vary, the components of the system also vary from entity to entity; therefore, HHS/CDC will not be providing a universal list of repair of HVAC control system components.

Comment: Another commenter suggested using a risk assessment-based approach to determine if failure testing is required after resolving a major problem.

Response: HHS/CDC disagreed with the comment regarding a risk assessment-based approach to determine if failure testing is required after a major problem. As such, HHS/CDC made no updates to the policy. HHS/CDC understands the commenters' concerns regarding a disruption due to a major problem and then the need for the entity to perform HVAC operational verification. However, HHS/CDC believes it is essential to verify the system annually and after any significant modification to ensure operational parameters are maintained during both normal operating conditions and failure conditions to prevent air-flow reversals into non-containment areas (*e.g.,* outside the containment boundary, hallways).

Comment: A commenter requested that HHS/CDC require an HVAC design verification process for ''primary containment (suit and cabinet room's primary barrier equipment)'' instead of secondary containment.

Response: HVAC is part of the facility safeguards, which is a secondary barrier; therefore, HHS/CDC will not be referring to this as primary containment. Secondary containment is defined by the 6th edition of the *Biosafety in Microbiological and Biomedical Laboratories* (BMBL) as the design and construction of the laboratory facility that provides a means of secondary containment of hazardous biological agents and toxins to protect personnel, the surrounding community, and the environment from possible exposure to hazardous biological agents and toxins.

Comment: A commenter recommended excluding small repairs, like-for-like replacement of smaller components, and minor automation system logic programming changes.

Response: HHS/CDC made no changes to the policy and agreed with the commenter that minor changes and small repairs mentioned above would not be considered major repairs.

Comment: Commenters suggested specific references be added to the list of systems to be tested/verified annually such as chemical shower, alarms, power source, communications, access systems, Air Pressure Resistant (APR) door gaskets, positive-pressure suits, water supply, and manual overrides tested (*e.g.,* between mechanical and electronic door interlocks).

Response: HHS/CDC agreed with the commenters and updated the policy to reference these items.

Comment: Commenters requested the term ''uninterrupted power supply'' be changed to adequately reflect the meaning.

Response: HHS/CDC agreed with the commenters and changed the term to ''automatically activated backup.''

Comment: A commenter asked if room air pressure trend lines captured from the Building Automation System (BAS) could be used to demonstrate the absence of air reversal.

Response: HHS/CDC agreed and revised the policy to state that entities may use BAS records to demonstrate no airflow reversal from the BSL–4/ABSL–4 laboratory during transition from normal power to the automatically activated backup, emergency power supply.

Comment: Another commenter suggested the inclusion of emergency power stand-by systems (emergency generator and automatic transfer switch), uninterruptible power supply, and critical equipment with internal batteries (*e.g.,* programmable logic control devices) to the minimum verification requirement for back-up power systems for HVAC.

Response: HHS/CDC agreed with the comment and revised the policy to include ''routine maintenance programs and backup, power systems'' to

succinctly summarize the minimum verification requirements.

Comment: Commenters requested term ''power failure'' be changed to adequately reflect the meaning.

Response: HHS/CDC agreed with commenters and changed the term to ''emergency power status.''

Comment: A commenter stated that ''only modifications in the programming sequence that affect how the laboratory reacts in failure conditions should be required to be re-tested.'' The commenter further suggested that changes or updates such as ''tuning PID loops, updates on coefficients that are imbedded in the sequence of operation, or the optimization of the logic to reduce the traffic of data in the system, should not require re-verification.''

Response: HHS/CDC made no changes based on this comment. HHS/CDC is primarily interested in ensuring that all systems are working as designed after any major changes, which is a normal practice to ensure the system is fully operational.

Comment: A commenter suggested that the addition or removal of hard-ducted equipment (*e.g.,* biological safety cabinets [BSCs], Class III BSC, or decontamination systems) without affecting the airflow balance of the room does not affect the operations, therefore no re-verification should be required.

Response: HHS/CDC made no changes based on the comment. Additions or removals should be tested to ensure repairs were effective even if one component was replaced.

Comment: A commenter stated that the methods for verification of primary containment integrity is unclear and needs to be clarified (specifically for primary containment of centrifuges and animal caging systems). The commenter further requested that the policy state what documentation or testing is needed for the verification.

Response: HHS/CDC made no changes to the policy based on the comment since there are no specific tests to determine integrity. Centrifuges need to have safety cups and no leaks in the washers to ensure integrity of primary containment inside the centrifuge (BMBL 6th edition, Inadvertent Toxin Aerosols). Animal cages need to be designed to allow recirculation of air into the room after high-efficiency particulate air (HEPA) filtration (BMBL 6th edition, Part 3: Biological Safety Cabinets). While there are no specific tests to determine integrity, HHS/CDC recommends that the entity verifies the animal caging systems and centrifuge, and its components, are working as designed.

Comment: Commenters requested to clarify the meaning of BSCs with an HVAC connection ''not working properly.'' A commenter asserted that the observation or evidence that the BSC is not working properly is more of an issue with the certification and maintenance of the equipment and not the HVAC system, therefore, it is not a major problem and does not require re-verification.

Response: HHS/CDC agreed with the commenters to clarify the meaning of ''not working properly'' and revised the policy to read ''observation or evidence that BSCs with an HVAC connection (hard duct or thimble) are not working as designed.'' HHS/CDC disagreed with the commenter regarding reverification. When major repairs are made to the BSC including replacing components of the BSC, the entity should test the system to ensure repair was effective and does not compromise the functionality of the HVAC system.

Comment: Commenters requested clarification on verifying BAS-programmed alarm communication as part of the BSL–4/ABSL–4 facility verification. One commenter recommended that verification of BAS programmed alarms should be tested only initially.

Response: HHS/CDC did not make any changes based on the comments. Verification of the BAS-programmed alarm communication should include assurance that if an alarm occurs, the strobes, lights, or audibles are activated. Testing annually ensures all parameters that are important to maintain containment have a functioning alarm.

Comment: A commenter provided editorial changes for clarity to paragraph A, Effluent, tissue, autoclave, and decontamination systems, under section 3 (confirmation that decontamination systems are operating as designed [*e.g.,* autoclave, room decontamination systems, tissue digesters, liquid effluent systems, and chemical showers]). Specifically, the commenter recommended:

- *3. A. i:* Change to Annual verification that system operational parameters have not changed from biologically validated conditions (*e.g.,* volume, pressure, temperature settings)
- *3. A. iii:* Change to Annual certification testing of associated HEPA filters, if applicable (*e.g.,* operating vent, pressure relief vent, chamber effluent/vent)
- *3. A. iv:* Change to Annual verification that system failure, emergency communication systems are operating as designed (*e.g.,* alarms, leak detection)
- *3. A. v:* Change to Verify appropriate filter media is selected and maintained annually (*e.g.,* HEPA, polytetrafluoroethylene [PTFE])

Another commenter agreed that 3. A. v. should be rewritten for clarity and stated that the sentence should refer to ''HEPA, however, it should instead be revised in terms of efficiency and particle size since HEPA filters are at least 99.97% of airport particles 0.3 micrometers, while PTFE filters have 99.99% efficiency of airborne particles 2.5micrometers in diameter.''

- *3. A. vi:* Another commenter stated that this was unclear and needs to be clarified to state specifically what document/test needs to be provided to meet this requirement.

Response: HHS/CDC agreed with the editorial changes, updated the policy based on these changes, and clarified 3. A. v. to read ''v. Verify appropriate filter media is selected and maintained annually (e.g., HEPA, PTFE).'' However, HHS/CDC disagreed with suggestion to revise 3. A. iv. ''annual verification that system failure alarms are operating as designed'' because the language is clear as written and communication is more encompassing than alarms. HHS/CDC agreed with the commenter to clarify 3. A. vi. to read, ''Implementation of risk-based preventative maintenance for other equipment that is critical to containment components, but is not specifically included above (e.g., cook tanks, etc.).''

Comment: A commenter requested to clarify decontamination systems by adding decontamination rooms and chambers.

Response: HHS/CDC made no changes to the policy based on the comment because some facilities may not have these rooms or chambers.

Comment: A commenter responded that room decontamination should be validated upon each use and not rely on annual verifications as a substitution, since parameters can shift slightly from use to use (*i.e.,* atmospheric moisture or room temperature).

Response: HHS/CDC agreed with commenter; however, no changes were made based on this comment since the policy notes that this is an annual verification of the room decontamination system and biological indicators are already mentioned for this reason.

Comment: Commenters suggested wording changes for annual verification requirement for certification of laboratory HVAC, plumbing vent line, and decontamination system filters, stating that there are no written standards by which to certify BSL–4/ABSL–4 laboratories.

Response: HHS/CDC agreed with the commenters and made the change to the policy.

Comment: A commenter requested that ''established'' specifications be changed to ''approved design'' specifications.

Response: HHS/CDC agreed with the commenter and revised the policy.

Comment: Commenters requested adding the verification requirement for ''pressure decay testing.''

Response: HHS/CDC agreed with the commenters and included that pressure decay testing may be used to identify and confirm proper operation of various BSL–4/ABSL–4 containment boundary points of failure (*e.g.,* penetrations, cracks, breaks, APR doors, HEPA isolation dampers, etc.).

Where can this document be found?

This policy document is available at the Federal Select Agent Program website at *www.selectagents.gov.*

Legal Authority

HHS/CDC is issuing this policy under the authority of sections 201–204 and 221 of Title II of Public Law 107–188, (42 U.S.C. 262a).

Tiffany Brown,

Acting Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2023–02730 Filed 2–8–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), 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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 117–286. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—DP23–001, Panel A, Assessing the Effectiveness of Programs, Policies, or Practices that Affect Social Determinants of Health to Promote Health Equity and Reduce Health Disparities in Chronic Diseases.

Date: April 18, 2023.

Time: 10:00 a.m.–6:00 p.m., EDT.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Natalie Brown, M.P.H., Scientific Review Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, Mailstop S107–8, Atlanta, Georgia 30341–3717; Telephone: (404) 639–4601; Email: *NBrown3@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–02746 Filed 2–8–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2019–E–5386 and FDA–2019–E–5380]

Determination of Regulatory Review Period for Purposes of Patent Extension; XOSPATA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for XOSPATA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by April 10, 2023. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 8, 2023. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 10, 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.

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 Nos. FDA–2019–E–5386 and FDA–2019–E–5380 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; XOSPATA.'' 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.'' The Agency 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 to 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 this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (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:

Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, XOSPATA (gilteritinib) indicated for the treatment of adult patients who have relapsed or refractory acute myeloid leukemia with a FLT3 mutation as detected by an FDA-approved test. Subsequent to this approval, the USPTO received patent term restoration applications for XOSPATA (U.S. Patent Nos. 8,969,336 and 9,487,491) from Astellas Pharma Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated January 24, 2019, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of XOSPATA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for XOSPATA is 2,002 days. Of this time, 1,757 days occurred during the testing phase of the regulatory review period, while 245 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* June 7, 2013. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on June 7, 2013.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* March 29, 2018. FDA has verified the applicant's claim that the new drug application (NDA) for XOSPATA (NDA 211349) was initially submitted on March 29, 2018.

3. *The date the application was approved:* November 28, 2018. FDA has verified the applicant's claim that NDA 211349 was approved on November 28, 2018.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 671 days or 498 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 6, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–02745 Filed 2–8–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0378]

Vaccines and Related Biological 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 Vaccines and Related Biological Products Advisory Committee (VRBPAC). The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. On March 7, 2023, the committee will meet in open session to discuss and make recommendations on the selection of strains to be included in the influenza virus vaccines for the 2023–2024 influenza season. 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 March 7, 2023, from 9 a.m. to 3:30 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of the COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. The online web conference meeting will be available at the following link on the day of the meeting: *https://youtu.be/fpZi7X29C-Q.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2023–N–0378. Please note that late, untimely filed comments will not be considered. The docket will close on March 6, 2023. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 6, 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 27, 2023, will be provided to the committee. Comments received after February 27, 2023, and by March 6, 2023, 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–2023–N–0378 for ''Vaccines and Related Biological Products Advisory Committee (VRBPAC); 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: Sussan Paydar or Prabhakara Atreya, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 240–506–4946, *CBERVRBPAC@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 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. On March 7, 2023, the committee will meet in open session to discuss and make recommendations on the selection of strains to be included in the influenza virus vaccines for the 2023–2024 influenza season.

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 at the time of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is 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 committee. All electronic and written submissions submitted to the Dockets (see **ADDRESSES**) on or before February 27, 2023, will be provided to the committee. Comments received after February 27, 2023, and by March 6, 2023, will be taken into consideration by FDA. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 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, along with their names, email addresses, and direct contact phone numbers of proposed participants, on or before 12 p.m. Eastern Time on February 27, 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 6 p.m. Eastern Time March 1, 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 Sussan Paydar or Prabhakara Atreya (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: February 6, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–02742 Filed 2–8–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2019–E–1145, FDA–2019–E–1146, and FDA–2019–E–1147]

Determination of Regulatory Review Period for Purposes of Patent Extension; ERLEADA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for ERLEADA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by April 10, 2023. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 8, 2023. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 10, 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.

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 Nos. FDA–2019–E–1145, FDA–2019–E–1146, and FDA–2019–E–1147 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; ERLEADA.'' 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.'' The Agency 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 to 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 this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, ERLEADA (apalutamide). ERLEADA is indicated for treatment of patients with non-metastatic castration-resistant prostate cancer. Subsequent to this approval, the USPTO received patent term restoration applications for ERLEADA (U.S. Patent Nos. 8,445,507; 8,802,689; 9,388,159) from The Regents of the University of California, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated June 12, 2019, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of ERLEADA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ERLEADA is 2,795 days. Of this time, 2,667 days occurred during the testing phase of the regulatory review period, while 128 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* June 23, 2010. The applicant claims March 19, 2009, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 23, 2010, which was the first date after receipt of the IND that the investigational studies were allowed to proceed.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* October 10, 2017. FDA has verified the applicant's claim that the new drug application (NDA) for ERLEADA (NDA 210951) was initially submitted on October 10, 2017.

3. *The date the application was approved:* February 14, 2018. FDA has verified the applicant's claim that NDA 210951 was approved on February 14, 2018.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 518 days, 706 days, or 356 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may

petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 6, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–02743 Filed 2–8–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Committee on Infant and Maternal Mortality (Formerly the Advisory Committee on Infant Mortality)

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces that the Advisory Committee on Infant and Maternal Mortality (ACIMM or Committee) has scheduled a public meeting. Information about ACIMM and the agenda for this meeting can be found on the ACIMM website at *https://www.hrsa.gov/advisory-committees/infant-mortality/index.html.*

DATES: March 20, 2023, 11:30 a.m. to 4:30 p.m. Eastern Time and March 21, 2023, 11:30 a.m. to 3:00 p.m. Eastern Time.

ADDRESSES: This meeting will be held by webinar. The webinar link and log-in information will be available at the ACIMM website before the meeting: *https://www.hrsa.gov/advisory-committees/infant-mortality/index.html.*

FOR FURTHER INFORMATION CONTACT: Vanessa Lee, MPH, Designated Federal Official, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Room 18N84, Rockville, Maryland 20857; 301–443–0543; or *SACIM@hrsa.gov.*

SUPPLEMENTARY INFORMATION:

ACIMM is authorized by section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended. The Committee is governed by provisions of Public Law 92–463, as amended by Public Law 117–286 (5 U.S.C. 10), which sets forth standards for the formation and use of Advisory Committees.

ACIMM advises the Secretary of Health and Human Services (Secretary) on department activities, partnerships, policies, and programs directed at reducing infant mortality, maternal mortality and severe maternal morbidity, and improving the health status of infants and women before, during, and after pregnancy. The Committee provides advice on how to coordinate federal, state, local, tribal, and territorial governmental efforts designed to improve infant mortality, related adverse birth outcomes, maternal health, as well as influence similar efforts in the private and voluntary sectors. The Committee provides guidance and recommendations on the policies, programs, and resources required to address the disparities and inequities in infant mortality, related adverse birth outcomes and maternal health outcomes, including maternal mortality and severe maternal morbidity. With its focus on underlying causes of the disparities and inequities seen in birth outcomes for women and infants, the Committee advises the Secretary on the health, social, economic, and environmental factors contributing to the inequities and proposes structural, policy, and/or systems level changes.

The agenda for the March 20–21, 2023, meeting is being finalized and may include the following topics: an update on the recommendations submitted to the Secretary on improving birth outcomes among American Indian and Alaska Native mothers and infants; a discussion to determine new and continuing priority areas for the Committee; federal updates; and Committee operations. Agenda items are subject to change as priorities dictate. Refer to the ACIMM website listed above for any updated information concerning the meeting.

Members of the public will have the opportunity to provide comments. Requests to submit a written statement or make oral comments to ACIMM should be sent to Vanessa Lee, using the email address above at least 3 business days prior to the meeting. Public participants may submit written statements in advance of the scheduled meeting by emailing *SACIM@hrsa.gov.* Oral comments will be honored in the order they are requested and may be limited as time allows.

Individuals who plan to attend and need special assistance or a reasonable accommodation should notify Vanessa Lee at the contact information listed above at least 10 business days prior to the meeting.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–02791 Filed 2–8–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of the President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders Meeting

AGENCY: Department of Health and Human Services, Office of the Secretary, Office for Civil Rights, White House Initiative on Asian Americans, Native Hawaiians, and Pacific Islanders.

ACTION: Notice of meeting.

SUMMARY: As required by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services (HHS) is hereby giving notice that the President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders will hold a meeting on March 14, 2023.

DATES: The Commission will meet on March 14, 2023, from approximately 9:00 a.m. Eastern Time (ET) to approximately 5:30 p.m. ET. The confirmed time and agenda will be posted on the website for the President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders: *https://www.hhs.gov/about/whiaanhpi/commission/meetings/index.html* when this information becomes available.

ADDRESSES: The meeting will be live streamed. Registration is required through the following link: *https://www.eventbrite.com/e/meeting-of-the-presidents-advisory-commission-on-aa-and-nhpis-registration-517786452217.*

FOR FURTHER INFORMATION CONTACT: Caroline Goon, Designated Federal

Officer, President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders, U.S. Department of Health and Human Services, Office of the Secretary, Office for Civil Rights, Hubert H. Humphrey Building, Room 515F, 200 Independence Ave SW, Washington, DC 20201; email: *AANHPICommission@hhs.gov;* telephone: (202) 619–0403, fax: (202) 619–3818.

SUPPLEMENTARY INFORMATION: The meeting is the fifth in a series of Federal advisory committee meetings regarding the development of recommendations to promote equity, justice, and opportunity for Asian American, Native Hawaiian, and Pacific Islander (AA and NHPI) communities. The meeting is open to the public and will be live streamed. The Commission, co-chaired by HHS Secretary Xavier Becerra and the U.S. Trade Representative Ambassador Katherine Tai, advises the President on: the development, monitoring, and coordination of executive branch efforts to advance equity, justice, and opportunity for AA and NHPI communities in the United States, including efforts to close gaps in health, socioeconomic, employment, and educational outcomes; policies to address and end anti-Asian bias, xenophobia, racism, and nativism, and opportunities for the executive branch to advance inclusion, belonging, and public awareness of the diversity and accomplishments of AA and NHPI people, cultures, and histories; policies, programs, and initiatives to prevent, report, respond to, and track anti-Asian hate crimes and hate incidents; ways in which the Federal Government can build on the capacity and contributions of AA and NHPI communities through equitable Federal funding, grantmaking, and employment opportunities; policies and practices to improve research and equitable data disaggregation regarding AA and NHPI communities; policies and practices to improve language access services to ensure AA and NHPI communities can access Federal programs and services; and strategies to increase public-and private-sector collaboration, and community involvement in improving the safety and socioeconomic, health, educational, occupational, and environmental well-being of AA and NHPI communities.

More information is available on the President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders website at *https://www.hhs.gov/about/whiaanhpi/commission/index.html.* Information on the 25 members of the President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders is available at *https://www.hhs.gov/about/whiaanhpi/commission/commissioners/index.html.*

Purpose of Meeting: The President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders, authorized by Executive Order 14031, will meet to discuss full and draft recommendations by the Commission's six Subcommittees on ways to advance equity, justice, and opportunity for Asian American, Native Hawaiian, and Pacific Islander communities. The Subcommittees are: Belonging, Inclusion, Anti-Asian Hate, Anti-Discrimination; Data Disaggregation; Language Access; Economic Equity; Health Equity; and Immigration and Citizenship Status.

Background: Asian American, Native Hawaiian, and Pacific Islander communities are among the fastest growing racial and ethnic populations in the United States according to the U.S. Census Bureau. However, in recent years, AA and NHPI individuals have faced increasing hate crimes and incidents that threaten their safety, as well as harmful stereotypes that often ignore socioeconomic, health, and educational disparities impacting these diverse communities. Anti-Asian violence increased during the COVID–19 pandemic, casting a shadow of fear and anxiety over many AA and NHPI communities. However, even before the pandemic, AA and NHPI communities in the United States have faced xenophobia, religious discrimination, racism, and violence. At the same time, AA and NHPI communities are overrepresented in the pandemic's essential workforce in healthcare, food supply, education, and childcare, with more than four million AA and NHPIs manning the frontlines throughout the pandemic.

Many AA and NHPI communities were also disproportionately burdened by the COVID–19 public health crisis. In addition to the disproportionate health impacts of COVID–19, particularly on Native Hawaiian and Pacific Islander communities, many AA and NHPI workers, families, and small businesses also faced devastating economic losses that must be addressed.

The challenges AA and NHPI communities face are often exacerbated by a lack of adequate data disaggregation and language access. The President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders works to advise the President on executive branch efforts to address these challenges and advance equity, justice, and opportunity for AA and NHPI communities.

Public Participation at Meeting: Members of the public are invited to view the Commission meeting. Registration is required through the following link: *https://www.eventbrite.com/e/meeting-of-the-presidents-advisory-commission-on-aa-and-nhpis-registration-517786452217.* Please note that there will be no opportunity for oral public comments during the meeting of the Commission. However, written comments are welcomed throughout the development of the Commission's recommendations to promote equity, justice, and opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders and may be emailed to *AANHPICommission@hhs.gov.*

Authority: Executive Order 14031. The President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders (Commission) is governed by provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App.), which sets forth standards for the formation and use of Federal advisory committees.

Krystal Ka'ai,

Executive Director, White House Initiative on Asian Americans, Native Hawaiians, and Pacific Islanders, President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders.

[FR Doc. 2023–02719 Filed 2–8–23; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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: National Cancer Institute Special Emphasis Panel; Cancer Target Discovery and Development Network, CTD2 (U01).

Date: March 7, 2023.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W260, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Robert F. Gahl, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9606 Medical Center Drive, Room 7W260, Rockville, Maryland 20850, 240–276–7869, *robert.gahl@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI K38 Review Meeting.

Date: March 22, 2023.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W244, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Amr Medhat Mohamed Ghaleb, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W244, Rockville, Maryland 20850, 240–276–6611, *amr.ghaleb@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 6, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02804 Filed 2–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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/or 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 grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Novel Drug and Medical Device Development Tools to Help Expedite Creation and Regulatory Approvals of New Therapies for Substance Use Disorders.

Date: March 6, 2023.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–5819, *gm145a@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Developing Digital Therapeutics for Substance Use Disorders.

Date: March 13, 2023.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jenny Raye Browning, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 443–4577, *jenny.browning@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Pharmacokinetic and Pharmacodynamic Trials for Medication Development in Substance Use Disorders.

Date: April 5, 2023.

Time: 2:00 p.m. to 2:45 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Marisa Srivareerat, Ph.D., Scientific Review Officer, Scientific Review Branch, Office of Extramural Policy, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 435–1258, *marisa.srivareerat@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: February 6, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02788 Filed 2–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; URGenT: Translational Efforts to Advance Gene-based Therapies for Ultra-Rare Neurological and Neuromuscular Disorders.

Date: March 3, 2023.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Mirela Milescu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, 301–496–5720, *mirela.milescu@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NST2 Overflow SEP.

Date: March 6, 2023.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: DeAnna Lynn Adkins, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892; 301–496–9223, *deanna.adkins@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Discovery and Functional Evaluation of Human Pain-associated Genes and Cells (U19) Review Meeting.

Date: March 8, 2023.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Eric S. Tucker, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20952, 301–827–0799, *eric.tucker@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Clinical Trials and Biomarker Studies in Stroke.

Date: March 13, 2023.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Nilkantha Sen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, 301–496–9223, *nilkantha.sen@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: February 6, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02789 Filed 2–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 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: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Clinical, Treatment and Health Services Research Study Section.

Date: February 8, 2023.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Luis Espinoza, Ph.D., Scientific Review Officer, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2109, Bethesda, MD 20817, (301) 443–8599, *espinozala@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: February 6, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02798 Filed 2–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute.

A portion of the meeting will be held as a virtual meeting and is open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Cancer Institute.

Date: March 6, 2023.

Open: 11:00 a.m. to 11:30 a.m.

Agenda: Remarks from the NCI Director.

Closed: 11:40 a.m. to 3:45 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Cancer Institute, 9609 Medical Center Drive, Rockville, MD 20850 (Virtual Meeting).

Contact Person: Brian E. Wojcik, Ph.D., Senior Review Administrator, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 3W414, Rockville, MD 20850, 240–276–5660, *wojcikb@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *https://deainfo.nci.nih.gov/advisory/bsc/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 6, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02803 Filed 2–8–23; 8:45 am]

BILLING CODE 4140–01–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; NIAID Vaccine Adjuvant Development Program in Infectious and Immune-Mediated Diseases (N01).

Date: March 6–8, 2023.

Time: 11:00 a.m. to 6:00 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 3G45, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Vanitha S. Raman, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G45, Rockville, MD 20852, 301–761–7949, *vanitha.raman@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: February 6, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02794 Filed 2–8–23; 8:45 am]

BILLING CODE 4140–01–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 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: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Understanding Persistent Signs and Symptoms Attributed to Post-treatment Lyme Disease (R01 Clinical Trial Not Allowed).

Date: March 14, 2023.

Time: 10:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F21B, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Maryam Feili-Hariri, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F21B, Rockville, MD 20852, 240–669–5026, *haririmf@niaid.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: February 6, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02795 Filed 2–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NRSA Individual Fellowship (F30, F31, F32) Review Panel.

Date: February 22, 2023.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Luis Espinoza, Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2109, Bethesda, MD 20892, (301) 443–8599, *espinozala@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Special Emphasis Panel for Member Conflict Applications.

Date: April 11, 2023.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Luis Espinoza, Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2109, Bethesda, MD 20892, (301) 443–8599, *espinozala@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: February 6, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02805 Filed 2–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive Patent License: Novel Therapeutics for the Treatment of Neurodegenerative Disorders

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institute of Neurological Disorders and Stroke (''NINDS''), an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive, sublicensable patent license to University College London Business, Ltd. (''UCLB''), incorporated in England and Wales under company registration number 02776963 whose registered office address is University College

London, Gower Street, London WC1E 6BT, United Kingdom, for NINDS's rights to the patent applications listed in the Supplementary Information section of this notice. UCLB is the technology transfer company of the University College London (''UCL''), a non-profit research institution located in London, United Kingdom.

DATES: Only written comments and/or applications for a license which are received by the National Institute of Neurological Disorders and Stroke Technology Transer Office by February 24, 2023 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, and comments relating to the contemplated exclusive patent license should be directed to: Lola Olufemi, Ph.D., Senior Technology Portfolio Manager; NINDS Technology Transfer Office, at Telephone: (301) 451–3748 or Email: *olufemioo@nih.gov.*

SUPPLEMENTARY INFORMATION: The following and all continuing U.S. and foreign patents/patent applications thereof are the intellectual properties to be licensed under the prospective agreement to UCLB include: PCT patent application number PCT/EP2021/084908, entitled ''Novel Therapeutics for the treatment of neurodegenerative disorders'' (claiming priority to GB 2019418.9, filed December 9, 2020) filed December 9, 2021 (HHS Reference E–198–2021) and GB patent application number 2117758.9, entitled, ''Therapeutics for the treatment of neurodegenerative disorders'' (HHS Reference E–071–2023), filed December 9, 2021.

With respect to the inventions described and claimed in the patent applications PCT/EP2021/084908 and GB 2117758.9, each of the inventors has assigned their rights to their respective employers or an entity which manages the intellectual property for their employer (The United States of America, UCL and UCLB). The prospective license will be for the purpose of consolidating the patent rights with UCLB, the co-owner of said rights, for commercial development and marketing. Consolidation of these co-owned rights is intended to expedite development of the invention, consistent with the goals of the Bayh-Dole Act codified as 35 U.S.C. 200–212.

The prospective patent license will be worldwide, exclusive, and may be limited to those fields of use commensurate in scope with the patent rights. It will be sublicensable, and any sublicenses granted by UCLB will be subject to the provisions of 37 CFR part 404.

The technologies describe antisense oligonucleotides (ASOs) that are capable of modulating splicing by preventing inclusion of an UNC13A cryptic exon into an UNC13A mature mRNA. Guide RNAs including the ASO, and viral vectors expressing the ASO are also described. Such ASOs and guide RNAs may be used as a medicament, for example, to treat neurodegenerative disorders, particularly those associated with TDP–43 pathology.

This notice is made pursuant to 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive patent license will include terms for the sharing of royalty income with NINDS from commercial sublicenses of the patent rights and may be granted unless within fifteen (15) days from the date of this published notice the NINDS receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license that are timely filed in response to this notice will be treated as objections to the grant of the contemplated exclusive patent license. In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information from these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C 552.

Susan E Ano,

Branch Chief, Technology Transfer Branch, National Institute of Neurological Disorders and Stroke.

[FR Doc. 2023–02772 Filed 2–8–23; 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: Center for Scientific Review Special Emphasis Panel; Fellowships: Musculoskeletal, Rehabilitation and Skin Sciences.

Date: March 8–9, 2023.

Time: 9:00 a.m. to 10:00 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: Carmen Bertoni, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 805B, Bethesda, MD 20892, (301) 867–5309, *bertonic2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell Biology and Development of Eye.

Date: March 8, 2023.

Time: 1:00 p.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: 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: Center for Scientific Review Special Emphasis Panel; Fellowships: Sensory and Motor Neurosciences, Cognition and Perception.

Date: March 9–10, 2023

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Bethesdan Hotel, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: John N Stabley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–0566, *stableyjn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Oncology.

Date: March 9–10, 2023.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Reigh-Yi Lin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Rm. 4152, MSC 7846, Bethesda, MD 20892, (301) 827–6009, *lin.reigh-yi@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular and Surgical Devices.

Date: March 9–10, 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: Willard Wilson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–867–5309, *willard.wilson@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Anti-Infective Resistance and Targets Study Section.

Date: March 9–10, 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: Jui Pandhare, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–7735, *pandharej2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biomaterials, Delivery, and Nanotechnology.

Date: March 9–10, 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: David R Filpula, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301–435–2902, *filpuladr@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Neurodevelopment, Synaptic Plasticity, and Neurodegeneration.

Date: March 9–10, 2023.

Time: 9:30 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: Robert C Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, 301–435–3009, *elliotro@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: February 6, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02797 Filed 2–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 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: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Member Conflict Applications—Neurosciences.

Date: April 18, 2023.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Beata Buzas, Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2116, MSC 6902, Bethesda, MD 20817, (301) 443–0800, *bbuzas@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: February 6, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02796 Filed 2–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 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: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BRAIN Initiative: Biology and Biophysics of Neural Stimulation and Recording. Technologies.

Date: February 28, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Mirela Milescu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892 *mirela.milescu@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 6, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–02790 Filed 2–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2023–0105]

National Maritime Security Advisory Committee; March 2023 Virtual Meeting

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee virtual meeting.

SUMMARY: The National Maritime Security Advisory Committee (Committee) will meet virtually to review and discuss on matters relating to national maritime security, including on enhancing the sharing of information related to cybersecurity risks that may cause a transportation security incident, between relevant Federal agencies and State, local, and tribal governments; relevant public safety and emergency response agencies; relevant law enforcement and security organizations; maritime industry; port owners and operators; and terminal owners and operators. The virtual meeting will be open to the public.

DATES: *Meeting:* The Committee will meet virtually on Tuesday, March 21, 2023, from 1 p.m. until 2:30 p.m. Eastern Standard Time (EST). The virtual meeting may close early if all business is finished.

Comments and supporting documentation: To ensure your comments are received by Committee members before the virtual meeting, submit your written comments no later than March 16, 2023.

ADDRESSES: To join the virtual meeting or to request special accommodations, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 1 p.m. EST on March 16, 2023, to obtain the needed information. The number of virtual lines are limited and will be available on a first-come, first-served basis.

Pre-registration information: Pre-registration is required for attending the virtual meeting. You must request attendance by contacting the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. You will receive a response with attendance instructions.

The National Maritime Security Advisory Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodations due to a disability to fully participate, please email Mr. Ryan Owens at *ryan.f.owens@uscg.mil* or call (202) 302–6565 as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the meeting as time permits, but if you want Committee members to review your comment before the meeting, please submit your comments no later than March 16, 2023. We are particularly interested in comments on the topics in the ''Agenda'' section below. We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the docket number [USCG–2023–0105]. Comments received will be posted without alteration at *https://www.regulations.gov* including any personal information provided. You may wish to view the Privacy & Security Notice and the User Notice, which are both available on the homepage of *https://www.regulations.gov,* and DHS's eRulemaking System of Records Notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov,* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Owens, Alternate Designated Federal Officer of the National Maritime Security Advisory Committee, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593, Stop 7581, Washington, DC 20593–7581; telephone 202–302–6565 or email at *ryan.f.owens@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the *Federal Advisory Committee Act,* (5 U.S.C. chapter 10). The Committee was established on December 4, 2018, by section 602 of the *Frank LoBiondo Coast Guard Authorization Act of 2018,* Public Law 115–282, 132 Stat. 4190, and is codified in 46 U.S.C. 70112. The Committee operates under the provisions of the *Federal Advisory Committee Act* (5 U.S.C. chapter 10) and 46 U.S.C. 15109. The National Maritime Security Advisory Committee provides advice, consults with, and makes recommendations to the Secretary of Homeland Security, via the Commandant of the U.S. Coast Guard, on matters relating to national maritime security.

Agenda

The agenda for the National Maritime Security Advisory Committee meeting is as follows:

Tuesday, March 21, 2023

(1) Call to Order.
(2) Introduction.
(3) Designated Federal Official Remarks.
(4) Roll call of Committee members and determination of quorum.
(5) Remarks from Committee Leadership.
(6) Discussion of Tasks. The Committee will provide a final report of recommendations on the following task:
a. Task T–2022–4: Transportation Worker Identification Credential (TWIC) Reader Program.
(7) Public Comment Period.
(8) Meeting Recess.

A copy of all meeting documentation will be available at *https://homeport.uscg.mil/NMSAC* no later than March 16, 2023. Alternatively, you may contact Mr. Ryan Owens as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

There will be a public comment period at the end of meeting. Speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the period allotted, following the last call for comments. Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above to register as a speaker.

Dated: February 1, 2023.

Amy M. Beach,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2023–02704 Filed 2–8–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6372–N–01]

Request for Information Regarding HUD's Learning Agenda Supplement: Fiscal Year 2023

AGENCY: Office of the Assistant Secretary for Policy Development and Research, Department of Housing and Urban Development, HUD.

ACTION: Request for information.

SUMMARY: Developing and using rigorous research and relevant evidence

is essential for HUD's mission of creating strong, sustainable, inclusive communities and quality, affordable homes for all. In March 2022, HUD published its first Department-wide HUD Learning Agenda: FY 2022–2026 (the ''Learning Agenda''), identifying the Department's priority learning and evidence needs and proposing research, evaluation, and data linkage projects to address those needs. The Learning Agenda covers a period of five years, with an annual review and update process. Through this Request for Information (RFI), HUD's Office of Policy Development and Research (PD&R) seeks public input regarding potential additions and adjustments to the Department's published Learning Agenda to reflect changes in learning priorities since March 2022. Information provided in response to this RFI will inform the development of the ''Learning Agenda Supplement: Fiscal Year 2023'' that HUD will publish to accompany the 2022–2026 Learning Agenda to document updates to the Department's priority learning needs.

DATES: Comments are requested on or before April 10, 2023. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Interested persons are invited to submit comments responsive to this RFI. All submissions must refer to the docket number and title of the RFI. Commenters are encouraged to identify the number of the specific question or questions to which they are responding. Responses may include the name(s) of the person(s) or organization(s) filing the comment; however, because any responses received by HUD will be publicly available, responses should not include any personally identifiable information or confidential commercial information.

There are two methods for submitting public comments.

1. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.*

2. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

HUD strongly encourages commenters to submit their feedback and recommendations electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a response, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the RFI.

Public Inspection of Public Comments. HUD will make all properly submitted comments and communications available for public inspection and copying during regular business hours at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (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 all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Turnham, Director, Policy Development Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW, Room 9266, Washington, DC 20410–0500; telephone number 202–402–6021 (this is not a toll-free number), or via email at *HUDLearningAgenda@huduser.gov.* 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.*

SUPPLEMENTARY INFORMATION:

I. Background

Developing and using rigorous research and relevant evidence is essential for HUD's mission of creating strong, sustainable, inclusive communities and quality, affordable homes for all. In March 2022, HUD published its first Department-wide HUD Learning Agenda: FY 2022–2026,[1] replacing the Research Roadmap that had served as HUD's research plan since 2014.[2] Drawing on extensive input from practitioners, advocates, people with lived experience in HUD programs, researchers, and policymakers at the Federal, State, and local levels, the Learning Agenda identifies the Department's priority learning and evidence needs and proposes research, evaluation, and data linkage projects to address those needs. The Learning Agenda covers a period of five years, with an annual review and update process. Accompanying the Learning Agenda, HUD also published Annual Evaluation Plans, which describe the significant evaluation activities HUD expects to launch each year as well as the major ongoing evaluation activities. To date, HUD has published Annual Evaluation Plans for 2022 and 2023.[3]

HUD plans to publish the next five-year Learning Agenda in 2027, covering the years 2027–2031. In the years preceding the publication of the 2027–2031 Learning Agenda, PD&R will conduct a periodic stakeholder engagement process to review and update the published Learning Agenda. This RFI is one component of HUD's stakeholder engagement process. The goal of the stakeholder engagement process is to identify new research and data priorities not included in the Learning Agenda that reflect emerging or unanticipated needs and knowledge gaps that, if answered, could help advance HUD's mission and strategic plan. This includes learning questions that relate to HUD programs and priorities that were not in place at the time the Learning Agenda: FY 2022–2026 was published. HUD will use the information obtained through this RFI and other forms of stakeholder engagement to produce the Learning Agenda Supplement: Fiscal Year 2023. The Learning Agenda Supplement: Fiscal Year 2023 will identify new

[1] The Learning Agenda is posted publicly on the Learning Agenda page of the HUD User website at *https://www.huduser.gov/portal/about/pdr_learningagenda.html.* PD&R hosts a dedicated email address (*HUDLearningAgenda@huduser.gov*) where visitors to the site can send questions, comments, or suggestions on HUD's research, evaluation, and evidence-building activities.

[2] All three Research Roadmaps produced by HUD are available at *https://www.huduser.gov/portal/about/pdr_learningagenda.html.*

[3] The Annual Evaluation Plans are posted publicly on the Learning Agenda page of the HUD User website at *https://www.huduser.gov/portal/about/pdr_learningagenda.html.* PD&R hosts a dedicated email address (*HUDLearningAgenda@huduser.gov*) where visitors to the site can send questions, comments, or suggestions on HUD's research, evaluation, and evidence-building activities.

priority learning questions not reflected in the published Learning Agenda as well as potential adjustments to the published priority questions. HUD will publish the Learning Agenda Supplement: Fiscal Year 2023 on its HUD User website alongside the Learning Agenda: FY 2022–2026.

II. Purpose of This Request for Information

The purpose of this RFI is to solicit information regarding new research and data priorities that should be considered for incorporation into the Learning Agenda Supplement: Fiscal Year 2023 as well as adjustments to existing research and data priorities.

III. Specific Information Requested

While PD&R welcomes all comments relevant to HUD's Learning Agenda, PD&R is particularly interested in receiving input from interested parties on the questions outlined below. In responding to these questions, interested parties should reference the Learning Agenda: FY 2022–2026, available at *https://www.huduser.gov/portal/about/pdr_learningagenda.html.*

1. Are there new priority learning questions (*i.e.,* not already included in the Learning Agenda: FY 2022–2026) that reflect emerging or unanticipated needs and knowledge gaps and that, if answered, could help advance HUD's mission?

2. Are there new priority data needs (*i.e.,* not already included in the Learning Agenda: FY 2022–2026) that reflect emerging or unanticipated needs and knowledge gaps and that, if addressed, could help advance HUD's mission?

3. Does the Learning Agenda: FY 2022–2026 contain learning questions or data priorities that need to be adjusted either because priorities have shifted or because they have been addressed through evidence-building activities by HUD or others?

4. Are there any additional comments on how HUD's Learning Agenda could be enhanced or improved to strengthen the evidence base for HUD's mission of creating strong, sustainable, inclusive communities and quality, affordable homes for all?

Solomon Greene,

Principal Deputy Assistant Secretary—Office of the Assistant Secretary for Policy Development and Research.

[FR Doc. 2023–02740 Filed 2–8–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7076–N–01]

60-Day Notice of Proposed Information Collection: Enterprise Income Verification Systems Debts Owed to Public Housing Agencies and Terminations; OMB Control No.: 2577–0266

AGENCY: Office of the Assistant Secretary for Public and Indian Housing (PIH), 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 60 days of public comment.

DATES: *Comments Due Date:* April 10, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be sent within 60 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 60-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT: Erica Mahoney, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, Room 3176, Washington, DC 20410; telephone 202–402–7731, (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. Mahoney.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in section A.

A. Overview of Information Collection

Title of Information Collection: EIV System Debts Owed to PHAs and Terminations.

OMB Approval Number: 2577–0266.

Type of Request: Revision of a currently approved collection.

Form Number: 52675.

Description of the need for the information and proposed use: In accordance with 24 CFR 5.233, processing entities that administer the Public Housing, Section 8 Housing Choice Voucher, Moderate Rehabilitation programs are required to use HUD's Enterprise Income Verification (EIV) system to verify employment and income information of program participants and to reduce administrative and subsidy payment errors. The EIV system is a system of records owned by HUD, as published in the **Federal Register** on July 20, 2005 at 70 FR 41780 and updated on August 8, 2006 at 71 FR 45066 and on August 17, 2022 at 87 FR 50635.

The Department seeks to identify families who no longer participate in a HUD rental assistance program due to adverse termination of tenancy and/or assistance, and owe a debt to a Public Housing Agency (PHA). In accordance with 24 CFR 982.552 and 960.203, the PHA may deny admission to a program if the family is not suitable for tenancy for reasons such as, but not limited to: unacceptable past performance in meeting financial obligations, history of criminal activity, eviction from Federally assisted housing in the last five years, family has committed fraud, bribery, or any other corrupt or criminal act in connection with a Federal housing program, or if a family currently owes rent or other amounts to the PHA or to another PHA in connection with a Federally assisted housing program under the U.S. Housing Act of 1937.

Within the scope of this collection of information, HUD seeks to collect from all PHAs, the following information:

1. Amount of debt owed by a former tenant to a PHA;

2. If applicable, indication of executed repayment agreement;

3. If applicable, indication of bankruptcy filing;

4. If applicable, the reason for any adverse termination of the family from a Federally assisted housing program.

This information is collected electronically from PHAs via HUD's EIV system. This information is used by HUD to create a national repository of families that owe a debt to a PHA and/or have been terminated from a federally assisted housing program. This national repository is available within the EIV system for all PHAs to access during the time of application for rental assistance. PHAs are able to access this information to determine a family's suitability for rental assistance, and avoid providing limited Federal housing assistance to families who have previously been unable to comply with HUD program requirements. If this information is not collected, the Department is at risk of paying limited Federal dollars on behalf of families who may not be eligible to receive rental housing assistance. Furthermore, if this information is not collected, the public will perceive that there are no consequences for a family's failure to comply with HUD program requirements.

Respondents: Public Housing Agencies.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD–52675	3834	Monthly	46,008	0.0833 Hours or 5 minutes per family.	24,841	$23.07	$573,081

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.

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.

Steven Durham,

Chief, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2023–02706 Filed 2–8–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7076–N–03]

60-Day Notice of Proposed Information Collection: Restrictions on Assistance to Noncitizens and Authorization for Information/Privacy Act; OMB Control No.: 2577–0295

AGENCY: Office of the Assistant Secretary for Public and Indian Housing (PIH), 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 60 days of public comment.

DATES: *Comments Due Date:* April 10, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be sent within 60 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 60-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5564 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT: Leea J. Thornton, Office of Policy, Program and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, Room 3178, Washington, DC 20410; telephone 202–402–3374, (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. Leea Thornton.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in section A.

A. Overview of Information Collection

Title of Information Collection: Restrictions on Assistance to Noncitizens and Authorization to Release Information/Privacy Act.

OMB Approval Number: 2577–0295.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–9886–A, HUD–9886–A–ARA, HUD–9886–A–CAM, HUD–9886–A–CHI, HUD–9886–A–CRE, HUD–9886–A–FRE, HUD–9886–A–HMO, HUD–9886–A–KOR, HUD–9886–A–RUS, HUD–9886–A–SPA, HUD–9886–A–VIE.

Description of the need for the information and proposed use: To determine eligibility and to assist HUD in managing and monitoring HUD-assisted housing programs, applicants and tenants applying for or receiving assistance in the Housing Choice

Voucher and Public Housing programs are required to sign the Authorization for the Release of Information/Privacy Act Notice—(Public and Indian Housing form HUD–9886). This is a request for revision of the current approval for HUD to require applicants and tenants to sign the form HUD–9886–A on or after January 1, 2024, in order to fully implement the Housing Opportunity Through Modernization Act of 2016 (HOTMA). Form HUD–9886 will continue to be used prior to the effective date of HOTMA.

Respondents: Individuals or households, State, or local government.

Reporting Burden

TABULATION OF ANNUAL REPORTING BURDEN—RETRICTION ON ASSISTANCE TO NONCITIZENS

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
New tenant admissions in Public & Indian Housing and Section 8 Programs**	4,055	213	863, 715.00	0.16	138,194.40	$30.00	$4,145,832.00
Annual recertification of tenants' eligible immigration status in Public & Indian Housing and Section 8 Programs**	4,055	7	28,385.00	0.08	2,270.80	30.00	68,124.00
Totals	4,055		892,100		140,465.20		4,213,956.00

Data is from HUD's Public & Indian Housing Information Center (PIC).
* Data from FY 2010, 2011, and 2012 averages.
** New tenants that are citizens or have permanent eligible immigration status must submit this form only once.

TABULATION OF ANNUAL REPORTING BURDEN—AUTHORIZATION OF RELEASE OF INFORMATION/PRIVACY ACT

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
New tenant admissions of adult members in Public Housing and Housing Choice Voucher programs.*	320,820	1	320,820	0.16	51,331.20	$30.00	$1,539,936
One-time execution of updated Form 9886 by current Public Housing and Housing Voucher Program tenants.**	4,203,135	1	4,203,135	0.08	336,250.80	30.00	10,087,500
Execution of Form 9886 by household members that turn 18	136,536	1	136,536	.08	10,922.88	30.00	327,686.40
Totals	4,660,491		4,660,491		398,504.88		11,955,122.40

Data is from HUD's Public & Indian Housing Information Center (PIC).
* Data from CY 2021.
** Prior to January 1, 2024, participants signed and submitted consent forms at each regularly scheduled income reexamination. On or after January 1, 2024, a participant must sign and submit consent forms at their next interim or regularly scheduled income reexamination. After all applicants or participants over the age of 18 in a family have signed and submitted a consent form once on or after January 1, 2024, family members do not need to sign and submit subsequent consent forms at the next interim or regularly scheduled income examination except under the following circumstances: (i) When any person 18 years or older becomes a member of the family, that family member must sign and submit a consent form; (ii) When a member of the family turns 18 years of age, that family member must sign and submit a consent form; or (iii) As required by HUD or the PHA in administrative instructions.

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.

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 as amended.

Steven Durham,

Acting Chief, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2023–02705 Filed 2–8–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R5–NWRS–2022–0152; FF05R06000–234–FXRS12630500000; OMB Control Number 1018–New]

Agency Information Collection Activities; Northeast Region Hunter Participation Surveys

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before April 10, 2023.

ADDRESSES: Send your comments on the information collection request (ICR) by one of the following methods (please reference ''1018–NER Hunter Surveys'' in the subject line of your comments):

- *Internet (preferred): https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R5–NWRS–2022–0152.
- *Email: Info_Coll@fws.gov.*
- *U.S. mail:* Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. 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: In accordance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We 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 our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies 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 provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our 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; and

(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.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our 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 us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Service has overall Federal responsibility for managing the Nation's fish and wildlife resources. One of the Service's priorities is to provide the public with wildlife-based outdoor recreation opportunities on National Wildlife Refuges, National Fish Hatcheries, and other Service lands (collectively, refuges). These outdoor recreation opportunities include hunting, which is an important opportunity for people to connect with nature, harvest food, and assist the Service in managing wildlife populations.

The National Wildlife Refuge System Administration Act, as amended by the National Wildlife Refuge System Improvement Act (The Act; 16 U.S.C. 668dd *et seq.*) stipulates that refuges undergo a comprehensive conservation planning process that, among other things, must look at the compatibility of wildlife-dependent recreation (including hunting) on refuges. We will use the information from the proposed survey effort to inform planning on refuges as mandated by The Act.

Hunting on refuges is regulated by both State and Federal laws as well as through refuge-specific regulations. These refuge-specific regulations are made in accordance with hunt plans required to be developed for each refuge. These hunt plans outline things such as refuge-specific bag limits, season dates, areas open and closed to hunting, allowed hunting time, etc. The hunt plans are an important tool that refuges use to manage harvest, safety, and visitor experience.

Creating hunt plans relies on sound biological and social data. Understanding hunter experience, preference, and harvest helps refuge managers and planners tailor hunt plans to suit biological and visitor objectives and maintain a safe environment for hunters and non-hunting visitors.

We consulted with regional leadership staff from the Service's Northeast Region and refuge staff in the development of the proposed surveys. This interdisciplinary team identified data gaps needed to help inform future hunt plan development, identify safety concerns that need attention, and better understand hunter preference in order to improve visitor experience. The region, in consultation with the Service's Human Dimension Branch, developed the surveys. This effort identified critical data necessary for the management of hunting on refuges and revising and creating future hunt plans.

This information collection is for two survey instruments:

- *Form 3–2557,* ''*Hunter Satisfaction Survey*''—The survey's purpose is to learn more about big game, small game, migratory bird, and upland game hunters and their overall experience hunting on national wildlife refuges and hatcheries. The survey includes

questions about species harvested, methods for managing hunter numbers, safety concerns, hunter regulations, user conflicts, satisfaction, and motivations for hunting.

• *Form 3–2558, ''Spring Turkey Hunter Participation Survey''*—The survey's purpose is to learn more about spring turkey hunters and their overall experience hunting on national wildlife refuges and hatcheries. The survey includes questions about species harvested, methods for managing hunter numbers, safety concerns, hunter regulations, user conflicts, satisfaction, and motivations for hunting.

Information from this collection will be used in the following primary ways:

• To inform the development or refinement of future refuge hunt plans or change the procedures for conducting hunting permit drawings or accepting applications, by providing information on hunter experience, preferences, harvest, and safety concerns to refuge managers and planners.

• To identify safety concerns that should be addressed outside of the hunt plan revision cycle.

• To identify refuge hunter preferences that can be addressed outside of the hunt plan revision cycle, in order to improve hunter experience and provide positive wildlife-based recreation experiences.

This survey will be conducted on an ongoing basis in order to track changes over time. Because this information is used to guide refuge management and planning efforts, it is important for the Service to understand the impact of management activities on refuge users. A longitudinal survey effort is necessary to track responses to changes in management.

Title of Collection: Northeast Region Hunter Participation Surveys.

OMB Control Number: 1018–New.

Form Numbers: 3–2557 and 3–2558.

Type of Review: New.

Respondents/Affected Public: Individuals.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response (minutes)	Estimated annual burden hours *
Form 3–2557, ''Hunter Participation Survey''					
Individuals	50	1	50	20	17
Form 3–2558, ''Spring Turkey Hunter Participation Survey''					
Individuals	50	1	50	10	8
Totals:	100		100		25

* Rounded.

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.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2023–02753 Filed 2–8–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–NWRS–2022–N076; FXRS12610500000/FF05RLNP00/223; OMB Control Number 1018–New]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Lenape National Wildlife Refuge Complex Mentored Hunt Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing a new information collection in use without an Office of Management and Budget (OMB) control number.

DATES: Interested persons are invited to submit comments on or before March 13, 2023.

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. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference ''1018-Lenape NWR'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. 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: In accordance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We 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.

On September 23, 2022, we published in the **Federal Register** (87 FR 58129) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on November 22, 2022.

In an effort to increase public awareness of, and participation in, our public commenting processes associated with information collection requests, the Service also published the **Federal Register** notice on *Regulations.gov* (Docket FWS–R5–NWRS–2022–0114) to provide the public with an additional method to submit comments (in addition to the typical *Info_Coll@fws.gov* email and U.S. mail submission methods). We received four comments in response to that notice. None of the comments addressed the information collection requirements; therefore, no response is required.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies 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 provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our 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; and

(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.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our 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 us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Service enters into agreements and partnerships with nonprofit groups to facilitate and formalize collaboration between parties in support of mutual goals and objectives, as authorized by:

- The Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j);
- The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–ee), as amended;
- The Refuge Recreation Act of 1962 (16 U.S.C. 460k *et seq.*), as amended;
- The Fish and Wildlife Coordination Act of 1934 (16 U.S.C. 661–667e), as amended; and
- The National Wildlife Refuge System Volunteer and Community Partnership Enhancement Act of 1998 (16 U.S.C. 742f), as amended.

Since 2014, the Lenape National Wildlife Refuge Complex, in partnership with the New Jersey Chapters of the National Wild Turkey Federation (NWTF), jointly administers mentored hunts on an annual basis. The mentored hunts occur on refuge property, and many of the mentors come from NWTF. The partnership provides would-be hunters with an opportunity to experience hunting by learning from Service staff and our partners through a mentored hunt program. The program not only provides the necessary hunting experience, but it also teaches the hunters about a variety of hunting topics, from ethics to shooting proficiency to wildlife ecology.

The program provides a great introduction to the rules and regulations that govern access, which can be a little overwhelming to new hunters. The Service's partnership with the NWTF helps new hunters to better understand access, rules, regulations, and setting up on public land. The program provides applicants with an opportunity to start a new family tradition, harvest their own food in a sustainable manner, or enjoy the outdoors in a new manner. All of these activities are safe, inclusive, and fun ways for people to enjoy their public lands.

The New Jersey Chapter of the NWTF solicits and registers participants via the Mentored Hunt Application (the application does not have a Service form number, as it is managed by the NWTF). The Service requires all participants to sign the Service's ''USFWS Release and Waiver of Liability,'' as well as Form 3–2260, ''Agreement for Use of Likeness in Audio/Visual Products,'' when they are on the Refuge. The application collects the following information:

- Basic contact information, to include name, address, phone number, and email address;
- Age at time of hunt;
- Customer Identification number (CID);
- Emergency contact (name and phone number);
- Applicant hunting history, such as:

—Whether applicant has completed a basic hunter education course;
—Whether applicant has purchased a hunting license and, if yes, when;
—Previous hunting experience;
—Previous participation in a mentored hunt program;
—Interest in hunting;
—Family history of hunting;
—Whether applicant owns equipment and, if yes, type of equipment; and
—Medical conditions/allergies for program staff to be aware of in the event of an emergency.

The public may request copies of the application form contained in this information collection by sending a request to the Service Information Collection Clearance Officer in **ADDRESSES**, above.

Title of Collection: Lenape National Wildlife Refuge Complex Mentored Hunt Application.

OMB Control Number: 1018–New.

Form Number: None.

Type of Review: Existing collection in use without an OMB control number.

Respondents/Affected Public: Individuals/households.

Total Estimated Number of Annual Respondents: 25.

Total Estimated Number of Annual Responses: 25.

Estimated Completion Time per Response: 15 minutes.

Total Estimated Number of Annual Burden Hours: 6 hours (rounded).

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

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.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2023–02751 Filed 2–8–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–ES–2023–0006; MO# 300030113; OMB Control Number 1018–0165]

Agency Information Collection Activities; Implementing Regulations for Petitions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection without revisions.

DATES: Interested persons are invited to submit comments on or before April 10, 2023.

ADDRESSES: Send your comments on the information collection request (ICR) by one of the following methods (please reference 1018–0165 in the subject line of your comments):

- *Internet (preferred): https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–ES–2023–0006.
- *Email: Info_Coll@fws.gov.*
- *U.S. mail:* Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. 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: In accordance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We 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 our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies 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 provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our 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; and

(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.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our 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 us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), specifies the process by which the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Services, we) make decisions on listing, delisting, or changing the status of a listed species, or revising critical habitat. Any interested person may submit a written petition to the Services requesting to add a species to the Lists of Endangered and Threatened Wildlife and Plants (Lists), remove a species from the Lists, change the listed status of a species, or revise the boundary of an area designated as critical habitat. The petition process is a central feature of the ESA and serves a beneficial public purpose.

Petitions

Information collected from petitioners used to determine whether to list a species includes:

(1) Petitioner's name; signature; address; telephone number; and association, institution, or business affiliation;

(2) Scientific and any common name of the species that is the subject of the petition;

(3) Clear indication of the administrative action the petitioner seeks (*e.g.,* listing of a species or revision of critical habitat);

(4) Detailed narrative justification for the recommended administrative action that contains an analysis of the supporting information presented;

(5) Literature citations that are specific enough for the Services to locate the supporting information cited by the petition, including page numbers or chapters, as applicable;

(6) Electronic or hard copies of supporting materials (*e.g.,* publications, maps, reports, letters from authorities) cited in the petition;

(7) For petitions to list, delist, or reclassify a species:

- Information to establish whether the subject entity is a ''species'' as defined in the ESA;
- Information on the current geographic range of the species, including range States or countries; and
- Copies of notification letters to States (explained in more detail below);

(8) Information on current population status and trends and estimates of current population sizes and distributions, both in captivity and the wild, if available;

(9) Identification of the factors under section 4(a)(1) of the ESA that may affect the species and where these factors are acting upon the species;

(10) Whether any or all of the factors alone or in combination identified in section 4(a)(1) of the ESA may cause the species to be an endangered species or threatened species (*i.e.,* place the species in danger of extinction now or in the foreseeable future), and, if so, how, including a description of the magnitude and imminence of the threats to the species and its habitat;

(11) Information on existing regulatory protections and conservation activities that States or other parties have initiated or have put in place that may protect the species or its habitat;

(12) For petitions to revise critical habitat:

- Description and map(s) of areas that the current designation (a) does not

include that should be included or (b) includes that should no longer be included, and the rationale for designating or not designating these specific areas as critical habitat. Petitioners should include sufficient supporting information to substantiate the requested changes, which may include GIS data or boundary layers that relate to the request, if appropriate;

• Description of physical or biological features essential for the conservation of the species and whether they may require special management considerations or protection;

• For any areas petitioned to be added to critical habitat within the geographical area occupied by the species at the time it was listed, information indicating that the specific areas contain the physical or biological features that are essential to the conservation of the species and may require special management considerations or protection. The petitioner should also indicate which specific areas contain which features;

• For any areas petitioned for removal from currently designated critical habitat within the geographical area occupied by the species at the time it was listed, information indicating that the specific areas do not contain the physical or biological features that are essential to the conservation of the species, or that these features do not require special management consideration or protections; and

• For areas petitioned to be added to or removed from critical habitat that were outside the geographical area occupied by the species at the time it was listed, information indicating why the petitioned areas are or are not essential for the conservation of the species; and

(13) A complete, balanced representation of the relevant facts, including information that may contradict claims in the petition.

Notification of States

For petitions to list, delist, or change the status of a species, or for petitions to revise critical habitat, regulations require petitioners to provide notice of their intention to submit a petition to the State agency responsible for the management and conservation of fish, plant, or wildlife resources in each State where the species that is the subject of the petition occurs. Because a court of appeals invalidated this regulatory requirement, the Service proceeds with processing petitions even without evidence that the petitioner has provided notice to the responsible State agency.

Title of Collection: Implementing Regulations for Petitions, 50 CFR 424.14.

OMB Control Number: 1018–0165.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals, private sector, and State/Tribal governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $280.00 (for materials, printing, postage, data equipment maintenance, etc.).

Requirement	Annual number of respondents	Average number of responses each	Annual number of responses	Average completion time per response (hours)	Estimated annual burden hours
Petitioner—Prepare and Submit Petitions (50 CFR 424.14(c), (d), (e), and (g))					
Individuals	2	1	2	120	240
Private Sector	11	1	11	120	1,320
Government	1	1	1	120	120
Petitioner—Notify States (50 CFR 424)					
Individuals	1	1	1	1	1
Private Sector	1	1	1	1	1
Government	1	1	1	1	1
Totals:	17		17		1,683

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.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2023–02752 Filed 2–8–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKR–GLBA–NPS0034721; PX.XGLBARP18.00.1 (223); OMB Control Number 1024–0281]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Glacier Bay National Park and Preserve Bear Sighting and Encounter Reports

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 we, the National Park Service (NPS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before March 13, 2023.

ADDRESSES: Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to *http://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. Please provide a copy of your comments to the NPS Information Collection Clearance Officer (ADIR–ICCO), 12201 Sunrise Valley Drive, (MS–242) Reston, VA 20191 (mail); or *phadrea_ponds@nps.gov*

(email). Please reference OMB Control Number 1024–0281 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Tania Lewis, Wildlife Biologist, Glacier Bay National Park and Preserve P.O. Box 140 Gustavus, AK 99826 (mail); or *tania_lewis@nps.gov* (email); or 907–697–2668 (telephone). 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 *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), 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 provide 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 February 16, 2022 (87 FR 8876). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility.

(2) The accuracy of our 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.

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 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 us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The National Park Service Organic Act, 54 U.S.C. 100101(a) *et seq.,* requires that the NPS preserve national parks for the enjoyment, education, and inspiration of this and future generations. In order to monitor resources and wildlife in the Glacier Bay National Park and Preserve (GLBA) and to enhance the safety of future visitors, the park monitors all sightings and interactions by visitors with bears. NPS regulations codified in 36 CFR 1–7, 12 and 13, are designated to implement statutory mandates that provide for resource protection and public enjoyment.

The NPS uses Forms 10–405, ''Tatshenshini—Alsek River Bear Report'' and 10–406, ''Bear Information Management Report to record observations and interactions by visitors to determine bear movements, habitat use, and species distribution. Obtaining immediate information on bear-human conflicts allows managers to respond promptly to mitigate further conflicts. Proactive mitigation includes notifying other backcountry users, issuing advisories or recommendations, or issuing closures to prevent further conflicts and maintain public safety.

Title of Collection: Glacier Bay National Park and Preserve Bear Sighting and Encounter Reports.

OMB Control Number: 1024–0281.

Form Number: 10–405, ''Tatshenshini—Alsek River Bear Report'' and 10–406, ''Bear Information Management Report''.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Backcountry and frontcountry visitors to Glacier Bay National Park and Preserve.

Estimated Number of Annual Responses: 50.

Estimated Number of Annual Respondents: 50.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 4.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

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.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2023–02767 Filed 2–8–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–35268; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before January 28, 2023, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by February 24, 2023.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before January 28, 2023. Pursuant to Section 60.13 of 36

CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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 us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers.

KEY: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

CALIFORNIA

Los Angeles County

Fudger, Eva K., House 211 South Muirfield Rd. Los Angeles, SG100008690

IOWA

Linn County

Bever Woods Historic District, Grande Ave. SE, 21st St. SE, Bever Ave. SE Cedar Rapids, SG100008668

Polk County

East Des Moines Industrial Historic District (Boundary Increase) 401 East Court Ave Des Moines, BC100008682

MARYLAND

Kent County

Chesapeake Fishing Shanty 21096 Chesapeake Ave. Rock Hall, SG100008669

MISSOURI

Jackson County

Safeway No. 357 3740 Troost Ave. Kansas City, SG100008688

NEBRASKA

Buffalo County Bohning Memorial Auditorium

(New Deal-era Resources in Nebraska MPS) 112 West Genoa St.Ravenna, MP100008672

Cass County

Agricultural Society Building (Auditorium) (New Deal-era Resources in Nebraska MPS) 101 West Eldora Ave. Weeping Water, MP100008673

Gage County

Centenary Methodist Episcopal Church 608 Elk St. Beatrice, SG100008674

Lancaster County

Laura Wood Residential Historic District Generally bounded by Otoe, High, 17th, and 19th Sts. Lincoln, SG100008675

Iowa-Nebraska Light and Power Company Plant 440 South 8th St. Lincoln, SG100008676

Webster County

navale Community Hall and Gymnasium (New Deal-era Resources in Nebraska MPS) 418 Minnesota Ave. Inavale, MP100008680

York County

York Auditorium (New Deal-era Resources in Nebraska MPS) 612 Nebraska Ave. York, MP100008681

OHIO

Franklin County

Columbus Center 100 East Broad St. Columbus, SG100008685

Hamilton County

Hart, Edward, House 818 Glenwood Ave. Cincinnati, SG100008694

Hocking County

Riley Specialty Shoe Company 14 Gallagher Ave. Logan, SG100008686

VERMONT

Addison County

East Monkton Church (Religious Buildings, Sites and Structures in Vermont MPS) 405 Church Rd. Monkton, MP100008689

VIRGINIA

Alexandria Independent City

St. Paul's Episcopal Church Cemetery Wilkes Street Cemetery Complex, 601 Hamilton Ln. Alexandria, SG100008671

Craig County

Gravel Hill Christian Church 197 Gravel Hill Rd. New Castle vicinity, SG100008670

Petersburg Independent City

Jarratt House 808–810 Logan St. Petersburg, SG100008693

Virginia Beach Independent City

Woodhurst Neighborhood Historic District Graham, Indian Run, and Mill Dam Rds., Strawberry Ln. and, Woodhurst Dr. Virginia Beach, SG100008701

A request for removal has been made for the following resources:

NEBRASKA

Colfax County

Our Lady of Perpetual Help Catholic Church & Cemetery Address Restricted Schuyler vicinity, OT82000600

Douglas County

Reagan, John E., House 2102 Pinkney St. Omaha, OT14000201

Saunders County

Beetison, Israel, House SE of Ashland Ashland vicinity, OT77000839

Ashland Bridge (Highway Bridges in Nebraska MPS) Silver St. over Salt Cr. Ashland, OT92000721

Additional documentation has been received for the following resources:

TENNESSEE

Jefferson County

Dandridge Historic District (Additional Documentation) Town center around Main, Meeting, and Gay Sts. Dandridge, AD73001792

Knox County

Knoxville College Historic District (Additional Documentation) 901 College St., NW Knoxville, AD80003841

Shelby County

Fowlkes-Boyle House (Additional Documentation) 208 Adams Ave.Memphis, AD74001928

Porter, Dr. D. T., Building (Additional Documentation) 10 N. Main St. Memphis, AD77001291

Wells School (Additional Documentation) 4140 Collierville—Arlington Rd. Eads vicinity, AD95000292

East Buntyn Historic District (Additional Documentation) Roughly bounded by Central and Southern Aves. and Ellsworth and Greer Sts. Memphis, AD95001332

Washington County

Salem Presbyterian Church (Additional Documentation) 147 Washington College Rd. Limestone vicinity, AD92001255

Authority: Section 60.13 of 36 CFR part 60.

Dated: February 1, 2023.

Sherry A Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2023–02769 Filed 2–8–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–HAFE–NPS0034737; PPWOWMADL3, PPMPSAS1Y.TD0000 (222); OMB Control Number 1024–0284]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; National Park Service Common Learning Portal

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before March 13, 2023.

ADDRESSES: Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to *http://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. Please provide a copy of your comments to the NPS Information Collection Clearance Officer (ADIR–ICCO), 12201 Sunrise Valley Drive, (MS–242) Reston, VA 20191 (mail); or *phadrea_ponds@nps.gov* (email). Please include ''1024–0284'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ryan Jennings, Program Manager, Distance Learning Group, Office of Learning and Development; at *ryan_jennings@nps.gov* (email), or 304–535–5057 (telephone). Please reference OMB Control Number 1024–0284 in the subject line of your comments. 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 *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), 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 provide 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 March 11, 2022 (87 FR 14035). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility.

(2) The accuracy of our 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.

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 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 us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The NPS is authorized by Service Employee Training (54 U.S.C. 101321) and Management Development and Training (54 U.S.C. 101322) in maintaining the *Common Learning Portal (CLP) as an online training platform for NPS employees and public users. The CLP website serves as a centralized repository of training programs offered by the NPS and increases the visibility of training available for participating users.* The CLP serves as a common platform for advertising national, regional, and park-specific training events to NPS employees. The CLP also establishes communities of practice using interest groups and forums in order to increase engagement throughout the NPS training community. Users may visit the CLP to learn about upcoming training events without creating a user account. However, to participate in community forum discussions, users must provide the following information to register and create an account:

- Name
- Email address
- Username

Once registered, the user will have the option to provide additional information including:

- Photo
- Title, location, expertise
- Duties, and
- Additional personal information such as hobbies or activities.

The information collected by the CLP is used to register non-NPS users, allowing the public to interact with training programs offered by the platform. To store the information collected, this system utilizes the following SORN: DOI–16, Learning Management System—October 9, 2018, 83 FR 50682. All personal information, with the exception of name and email address, are optional.

Title of Collection: National Park Service Common Learning Portal.

OMB Control Number: 1024–0284.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals (non-federal employees).

Total Estimated Number of Annual Respondents: 400.

Total Estimated Number of Annual Responses: 400.

Estimated Completion Time per Response: 5 minutes.

Total Estimated Number of Annual Burden Hours: 33.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: None.

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.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2023–02768 Filed 2–8–23; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–1352]

Certain Selective Thyroid Hormone Receptor-Beta Agonists, Processes for Manufacturing or Relating to Same, and Products Containing Same; Institution of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 29, 2022, under section 337 of the Tariff Act of 1930, as amended, on behalf of Viking Therapeutics, Inc. of San Diego, California. A supplement was filed on January 13, 2023. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States of certain selective thyroid hormone

receptor-beta agonists, processes for manufacturing or relating to same, and products containing same by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure a domestic industry or prevent the establishment of a domestic industry. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* 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 at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 3, 2023, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States of certain products identified in paragraph (2) by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure a domestic industry in the United States or prevent the establishment of an industry in the United States;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''drug products and drug substances that are selective thyroid hormone receptor-beta agonists for the treatment of metabolic disorders and liver diseases'';

(3) Pursuant to section 210.10(b)(3) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(3), the presiding Administrative Law Judge shall hold an early evidentiary hearing, find facts, and issue an early decision, within 100 days of institution except for good cause shown, as to whether complainant can show that the threat or effect of the alleged unfair acts is to (i) to destroy or substantially injure an industry in the United States, or (ii) to prevent the establishment of such an industry. Notwithstanding any Commission Rules to the contrary, which are hereby waived, any such decision should be issued in the form of an initial determination (ID) under Commission Rule 210.42(a)(3), 19 CFR 210.42(a)(3). The ID will become the Commission's final determination 30 days after the date of service of the ID unless the Commission determines to review the ID. Any such review will be conducted in accordance with Commission Rules 210.43, 210.44, and 210.45, 19 CFR 210.43, 210.44, and 210.45. The issuance of an early ID finding that complainant failed to demonstrate that the threat or effect of the alleged unfair acts is (i) to destroy or substantially injure an industry in the United States, or (ii) to prevent the establishment of such an industry shall stay the investigation unless the Commission orders otherwise; any other decision shall not stay the investigation or delay the issuance of a final ID covering the other issues of the investigation. Commissioner Schmidtlein does not support the use of a 100-day proceeding in this investigation. *See* concurrently filed Memorandum No. C086–VV–002 (February 3, 2023);

(4) Pursuant to Commission Rule 210.50(b)(l), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(l), (f)(1), (g)(1);

(5) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Viking Therapeutics, Inc., 9920 Pacific Heights Blvd., Suite 350, San Diego, CA 92121

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Ascletis Pharma Inc., 12/F, Building D, 198 Qidi Road, HIPARK, Xiaoshan District, Hangzhou, Zhejiang Province, China 312000

Ascletis Pharmaceuticals Co. Ltd., No.1, Yunhai Road, Lihai Town, Binhai New Town, Shaoxing, Zhejiang Province, China 312000

Ascletis Bioscience Co., Ltd., 12F, Building D, 198 Qidi Road, HIPARK, Xiaoshan District, Hangzhou, Zhejiang Province, China 311200

Gannex Pharma Co., Ltd., 3F, No. 665 Zhangjiang Road, Pilot Free Trade Zone, Shanghai, China 200000

Jinzi Jason Wu, 3413 E. Pine Street, Seattle, WA 98122

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(6) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C.

1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2022).

Issued: February 3, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–02725 Filed 2–8–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1185 (Second Review)]

Steel Nails From the United Arab Emirates; Scheduling of a Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on steel nails from the United Arab Emirates would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: February 6, 2023.

FOR FURTHER INFORMATION CONTACT: Alejandro Orozco (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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 review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On December 5, 2022, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review should proceed (87 FR 79907, December 28, 2022); accordingly, a full review is being scheduled pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's website.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on June 13, 2023, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold an in-person hearing in connection with the review beginning at 9:30 a.m. on June 29, 2023. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 22, 2023. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the review, may in their discretion for good cause shown, grant such a request. Requests to appear as remote witness due to illness or a positive COVID–19 test result may be submitted by 3 p.m. the business day prior to the hearing. Further information about participation in the hearing will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.*

A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference, if deemed necessary, to be held at 9:30 a.m. on June 28, 2023. Parties shall file and serve written testimony and presentation slides in connection with their presentation at the hearing by no later than 4:00 p.m. on June 28, 2023. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is June 21, 2023. Parties shall also file written testimony in connection with their presentation at the hearing, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is July 10, 2023. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before July 10, 2023. On August 1, 2023, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or

before August 3, 2023, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: February 6, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–02761 Filed 2–8–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB 1140–NEW]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; New Collection; 30-Day Alien Suitability Request—ATF Form 3252.11

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection (IC) is being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until April 10, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact: Renee Reid, FO/ESB—Mailstop (7.E–401), either by mail at 99 New York Ave. NE, Washington, DC 20226, by email at *Renee.Reid@atf.gov,* or by telephone at 202–648–9255.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

Evaluate 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;

Evaluate 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;

Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

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 responses.

Overview of This Information Collection

Type of Information Collection (check justification or form 83): New Collection.

The Title of the Form/Collection: 30-Day Alien Suitability Request.

The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number (if applicable): ATF Form 3252.11.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Individuals or households.

Other (if applicable): None.

Abstract: The purpose of the collection is to relay the status of an illegal alien currently sponsored by ATF and to request continued use of the individual as an ATF Confidential Informant.

An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: An estimated 30 respondents will provide information to complete this form 12 times annually, and it will take approximately 15 minutes to complete the form.

An estimate of the total public burden (in hours) associated with the collection: The estimated annual public burden associated with this collection is 90 hours, which is equal to 30 (total respondents) * 12 (# of response per respondent) * .25 (15 minutes or the time taken to prepare each response).

If additional information is required contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: February 3, 2023.

John R. Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–02722 Filed 2–8–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB 1140–NEW]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; New Collection; Adverse Information Suitability Request—ATF Form 3252.12

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit the following information collection request to the Office of Management and Budget (OMB) for

review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection (IC) is being published to obtain comments from the public.

DATES: Comments are encouraged and will be accepted for 60 days until April 10, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact: Renee Reid, FO/ESB—Mailstop (7.E–401), either by mail at 99 New York Ave NE, Washington DC 20226, by email at *Renee.Reid@atf.gov,* or by telephone at 202–648–9255.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate 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;
—Evaluate 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;
—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and
—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 responses.

Overview of This Information Collection

1. *Type of Information Collection (*check justification or form 83): New Collection.

2. *The Title of the Form/Collection:* Adverse Information Suitability Request.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form 3252.12.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households.

Other (if applicable): None.

Abstract: Any individual currently serving a confidential informant (CI) for ATF must provide their personally identifiable information. ATF will utilize the information to verify the identity of the individual and conduct indices checks. Respondents include members of the public who are presently serving as a CI for ATF.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 300 respondents will provide information to complete this form once annually, and it will take approximately 20 minutes to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 100 hours, which is equal to 300 (total respondents) * 1 (# of response per respondent) * .3334 (20 minutes or the time taken to prepare each response).

If additional information is required contact: John R Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: February 3, 2023.

John R. Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–02723 Filed 2–8–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB 1140–NEW]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; New Collection; Acknowledgement of Deactivation Removal—ATF Form 3252.9

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection (IC) is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until April 10, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact: Renee Reid, FO/ESB—Mailstop (7.E–401), either by mail at 99 New York Ave NE, Washington DC 20226, by email at *Renee.Reid@atf.gov,* or by telephone at 202–648–9255.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate 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;
—Evaluate 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;
—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and
—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 responses.

Overview of This Information Collection

1. *Type of Information Collection (*check justification or form 83): New Collection.

2. *The Title of the Form/Collection:* Acknowledgement of Deactivation Removal.

3. *The agency form number, if any, and the applicable component of the Department* sponsoring the collection:

Form number (if applicable): ATF Form 3252.9.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other (if applicable): None.

Abstract: The purpose of the collection is to document the CI's acknowledgment that he or she is no longer authorized to serve as an ATF CI. The CI will review the ATF F 3252.9 sign and date to acknowledge his or her understanding of the notification.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 300 respondents will provide information to complete this form once annually, and it will take approximately 15 minutes to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 75 hours, which is equal to 300 (total respondents) * 1 (# of response per respondent) * .25 (10 minutes or the time taken to prepare each response).

If additional information is required contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: February 3, 2023.

John R. Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–02721 Filed 2–8–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0015]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Request To Be Included on the List of Pro Bono Legal Service Providers for Individuals in Immigration Proceedings (Form EOIR–56)

AGENCY: Department of Justice, Executive Office for Immigration Review.

ACTION: 30-Day Notice.

SUMMARY: The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on December 8, 2022, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until March 13, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone: (703) 305–0289. Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Office, Washington, DC 20503 or sent to *OIRA_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate 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;

—Evaluate 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;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—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 responses.

Overview of This Information Collection

1. *Type of Information Collection:* Renewal of a currently approved collection.

2. *The Title of the Form/Collection:* Request to be Included on the List of Pro Bono Legal Service Providers for Individuals in Immigration Proceedings.

3. *The agency form number:* EOIR–56 (OMB #1125–0015).

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Legal service providers seeking to be included on the List of Pro Bono Legal Service Providers (''List''), a list of persons who have indicated their availability to represent aliens on a pro bono basis. Abstract: EOIR seeks approval to renew its implementation of an electronic system to apply for and renew participation in the List, in addition to maintaining the paper version of the Form EOIR–56. Use of the electronic system is strongly encouraged and preferred. Form EOIR–56 is intended to elicit, in a uniform manner, all of the required information for EOIR to determine whether an applicant meets the eligibility requirements for inclusion on the List.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 25 respondents will complete each form within approximately 30 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* 12.50 annual burden hours.

If additional information is required contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: February 3, 2023.

John R. Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–02728 Filed 2–8–23; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0255]

Agency Information Collection Activities; Proposed Collection Comments Requested; Reinstatement, with Change, of a Previously Approved Collection for Which Approval Has Expired: 2022 Census of Law Enforcement Training Academies

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be

submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register**, Volume 87, Number 219, page 68518 on Tuesday, November 25, 2022, allowing a 60-day comment period. Following publication of the 60-day notice, BJS did not receive any comments on the proposed information collection.

DATES: Comments are encouraged and will be accepted for 30 days until March 13, 2023.

FOR FURTHER INFORMATION CONTACT: 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.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
—Evaluate 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;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—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 responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement of the Census of Law Enforcement Training Academies, with changes, a previously approved collection for which approval has expired.

(2) *The Title of the Form/Collection:* 2022 Census of Law Enforcement Training Academies (CLETA).

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number for the questionnaire is CJ–52. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will include all state and local law enforcement training academies in the United States that provide basic training to law enforcement recruits. BJS has conducted the CLETA regularly since 2002. The 2022 CLETA will be the fifth administration. Historically, the CLETA generates an enumeration of all state and local training academies that provide basic law enforcement training in the United States. The CLETA provides details about the instructors, curricula, resources, and recruits at the approximately 750 training academies operating nationally. The survey asks about the operating entity; resources available to recruits; total operating budget; full-time and part-time instructors or trainers and their education, sworn officer experience, certifications, and ongoing training; sex, race and Hispanic origin, prior educational attainment, and veteran status of recruits starting and completing training; and the length and content of basic training curricula offered at the academy.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* BJS estimates approximately 750 law enforcement academies with a respondent burden of about 2 hours per academy to complete the survey form and about 10 minutes per agency of data quality follow-up time for approximately 450 of those academies.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,575 total burden hours associated with this information collection.

If additional information is required, contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: February 3, 2023.

John R. Carlson,

Department Clearance Officer for PRA, Policy and Planning Staff, U.S. Department of Justice.

[FR Doc. 2023–02727 Filed 2–8–23; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; National Elder Abuse Victim Services Needs Assessment

AGENCY: Elder Justice Initiative, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Elder Justice Initiative, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** on October 6, 2022, allowing for a 60-day comment period. No comments were received in response to that notice.

DATES: Comments are encouraged and will be accepted for an additional 30 days until March 13, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Andy Mao, National Elder Justice Coordinator, Elder Justice Initiative, 175 N Street NE, Washington, DC 20002 (phone: 202/616–0539). Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate 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;
—Evaluate 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;
—Enhance the quality, utility, and clarity of the information to be collected; and/or
—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 responses.

Overview of This Information Collection

1. *Type of Information Collection:* New data collection.
2. *The Title of the Form/Collection:* National Elder Abuse Victim Services Needs Assessment [Form #]
3. *The agency form number:*
4. *Affected public who will be asked or required to respond, as well as a brief abstract:* This information will be solicited from victims of elder abuse, elder justice professionals (*e.g.,* adult protective services, law enforcement, victim services organizations, etc.) who serve those older victims, representatives of federal agencies with elder justice programming, and family and friends who are oftentimes instrumental in victims' recovery and have a unique window into the needs of older victims.

Abstract. The Elder Justice Initiative proposes to conduct the first National Elder Abuse Victim Services Needs Assessment, a one-time information collection. The goal of this information collection is to gain insight into how to best meet the service needs of older victims of elder abuse from the initial incident to investigation and prosecution (if any), through to long-term recovery, and separately for each type of elder abuse (physical abuse, psychological abuse, sexual abuse, caregiver neglect, financial exploitation, financial fraud). To accomplish this goal, the Elder Justice Initiative will: (1) conduct national surveys with elder justice professionals and federal staff, and older victims and their family and friends; and (2) conduct a series of focus groups with elder justice professionals and federal staff, and older victims and their family and friends. A targeted dissemination strategy featuring results and recommendations will aid in elder abuse services program planning.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

There are four separate but related information collections: An estimated 1000 elder justice professionals and federal staff with elder justice programming will complete an electronic survey estimated to take 20 minutes to complete per respondent, and an estimated 1500 older victims, their family and friends will complete an electronic survey estimated to take 10 minutes to complete per respondent. Fifteen 90-minute focus groups with elder justice professionals and federal staff, and 15 90-minute focus groups with older victims, their family and friends will consist of not more than 10 participants per focus group, for a total of 300 focus group participants. In total, 2800 individuals will participate in the National Elder Abuse Victim Services Needs Assessment.

6. *An estimate of the total public burden (in hours) associated with the collection:* 1033 annual burden hours (see Table 1 for calculation).

TABLE 1—ESTIMATES OF HOUR BURDEN INCLUDING ANNUALIZED HOURLY COSTS

Task	Estimated time (minutes)	Total participants	Total minutes per task
Surveys of elder justice professionals and federal staff	20	1,000	20,000.
Surveys of older victims and their family and friends	10	1,500	15,000.
Focus Groups (elder justice professionals and federal staff; older victims, family and friends.	90	300	27,000.
Total			62,000 (1,033 hrs).

If additional information is required contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: February 3, 2023.

John R. Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–02726 Filed 2–8–23; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). If granted, these proposed exemptions allow designated parties to engage in transactions that would otherwise be prohibited provided the conditions stated there in are met. This notice includes the following proposed exemptions: Unit Corporation Employees' Thrift Plan, D–12026; The Liberty Media 401(k) Savings Plan and The Liberty Media 401(k) Savings Plan Trust, D–12023; The Occidental Petroleum Corporation Savings Plan and The Anadarko Employee Savings Plan, D–12032 and D–12033.

DATES: All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, by March 27, 2023.

ADDRESSES: All written comments and requests for a hearing should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, U.S. Department of Labor, Attention:

Application No. _____, stated in each Notice of Proposed Exemption via email to *e-OED@dol.gov* or online through *http://www.regulations.gov* by the end of the scheduled comment period. Any such comments or requests should be sent by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW, Washington, DC 20210. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

SUPPLEMENTARY INFORMATION:

Comments

Persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person's interest in the proposed exemption and the manner in which the person would be adversely affected by the exemption, if granted. A request for a hearing can be requested by any interested person who may be adversely affected by an exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing where: (1) The request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

Warning: All comments received will be included in the public record without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the *https://www.regulations.gov* website is an ''anonymous access'' system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department, unless otherwise stated in the Notice of Proposed Exemption, within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[1] Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Unit Corporation Employees' Thrift Plan Located in Tulsa, Oklahoma

[Application No. D–12026]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), to the Unit Corporation Employee's Thrift Plan (the Plan) in accordance with the Department's exemption procedures.[2] This proposed exemption would permit: (1) the acquisition by the participants' accounts (the Accounts) in the Plan, of warrants (the Warrants) issued by Unit Corporation, the Plan sponsor, in connection with Unit Corporation's chapter 11 bankruptcy filing (the Bankruptcy Filing), in exchange for the participants' waiver of claims against ''Released Parties;'' [3] and (2) the holding of the Warrants by the Plan (together, the Proposed Transactions), provided that the conditions set forth herein are met.

Summary of Facts and Representations [4]

Background

1. *Unit Corporation.* Unit Corporation (also referred to as the Applicant) is a

[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

[2] 29 CFR part 2570, subpart B (75 FR 66637, 66644, October 27, 2011). For purposes of this proposed exemption, references to specific provisions of title I of ERISA unless otherwise specified, should be read to refer as well to the corresponding provisions of Internal Revenue Code (Code) section 4975.

[3] As stated in the Reorganization Plan, the Released Parties include: (a) Unit Corporation; (b) the Reorganized Unit Corporation; (c) the Debtor-in-possession Agent; (d) the Debtor-in-possession Lenders; (e) the RBL Agent (the agent for secured parties holding First-Priority Lien Obligations); (d) the RBL Lenders (a type of asset-based lending (ABL) commonly used in the oil and gas sector, reserve based loans are made against, and secured by, an oil and gas field or a portfolio of undeveloped or developed and producing oil and gas assets; (e) the Consenting Noteholders; (f) the Exit Facility Agent; (g) the Exit Facility Lenders; and (h) the Subordinated Notes Indenture Trustee.

[4] The Department notes that the facts and representations stated herein are those of the Applicant and they are assumed to be true for purposes of the Department's review of the application for an exemption. The Department cautions that the availability of this exemption, if granted, is subject to the express condition that the material facts and representations contained in application *D*–12026 are true and complete, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described by the Applicant in the application, the exemption will cease to apply as of the date of the change.

publicly-traded energy company engaged in oil and natural gas exploration and production, contract drilling, and midstream services. The Applicant is headquartered in Tulsa, Oklahoma and employs 650 individuals. Unit Corporation stock is currently traded on the over-the-counter marketplace following its delisting from the New York Stock Exchange as a result of its Bankruptcy Filing (as discussed in more detail below). During the year ended December 31, 2019, Unit Corporation recorded revenues of $674.6 million and a net loss of $553.9 million, or $10.48 per share.

2. *The Plan.* The Plan is a participant-directed 401(k) individual account plan. As of December 1, 2021, the Plan covered 472 participants and held total assets of approximately $70,127,000. Fidelity Management Trust Company (the Trustee) serves as directed trustee and recordkeeper for the Plan. The Unit Corporation Benefits Committee (the Benefits Committee) serves as the Plan Administrator with overall responsibility for the operation and administration of the Plan and as the named fiduciary for purposes of investment-related matters.

3. *Unit Common Stock.* As of September 3, 2020, the Plan held 4,932,864 shares of Unit common stock (Old Unit Common Stock), which comprised 0.68% of the Plan's total assets.[5] Plan-held shares of Old Unit Common Stock were allocated among the individual Accounts of Plan participants (the Invested Participants) and held in a stock fund within the Plan (the Stock Fund).

4. *The Plan's Pass-Through Process.* Provisions of the Trust Agreement covering the voting of Employer Stock state that: ''Each participant with an interest in the Stock Fund shall have the right to direct the Trustee as to the manner in which the Trustee is to vote (including not to vote) that number of shares of Employer Stock that is credited to his Account.'' As represented by the Applicant, Invested Participants have routinely voted their pro-rata interest in the Company Stock Fund on matters such as annual shareholder proxies.

5. *The Bankruptcy Filing.* On May 22, 2020, Unit Corporation and certain of its affiliates filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of Texas, Houston Division under Case No. 20–327401 (the Bankruptcy Filing).[6] On May 26, 2020, the New York Stock Exchange (NYSE) suspended trading in Old Unit Common Stock because of the Bankruptcy Filing. On June 10, 2020, the NYSE filed a Securities and Exchange Commission Form 25 to delist and deregister Old Unit Common Stock.

On June 19, 2020, Unit Corporation filed a Debtors' First Revised Proposed Joint Chapter 11 Plan of Reorganization (the Reorganization Plan) and a First Revised Disclosure Statement for the Debtors' First Revised Proposed Joint Chapter 11 Plan of Reorganization (the Disclosure Statement) with the Bankruptcy Court to reduce its debt obligations and right-size its balance sheet for go-forward operations. On July 30, 2020, the Bankruptcy Court confirmed Unit Corporation's Reorganization Plan and on September 3, 2020, Unit Corporation announced that it had emerged from bankruptcy protection upon the completion of a financial restructuring process and the implementation of the Reorganization Plan. Upon Unit Corporation's emergence from bankruptcy, shares of Old Unit Common Stock were cancelled.

6. *The Warrants.* Under the Reorganization Plan, Unit Corporation completed a debt-for-equity exchange with holders of its previous $650 million, 6.625% senior subordinated notes that were due in 2021, and exchanged Old Unit Common Stock for the Warrants. Each Warrant entitles its registered holder to receive from Unit Corporation one share of newly-issued common stock in Unit Corporation (New Unit Common Stock) upon the exercise of the Warrant through the payment of an Exercise Price during an Exercise Period. The exchange rate for the Warrants is 1 to .03460447, where one share of Old Unit Common Stock converts to .03460447 Warrants.

7. *Acceptance or Rejection of the Warrants.* As holders of the Old Unit Common Stock, the Invested Participants qualify to receive the Warrants under the Reorganization Plan. However, the Warrants have not yet been issued to the Plan. The Warrants will be issued to the Plan if the Department grants a final exemption. The Applicant represents that the Benefits Committee has not had any involvement with the Warrants since Unit Corporation's emergence from bankruptcy.

To accept the Warrants, an Invested Participant must agree to release potential claims against Unit Corporation and affiliates (*i.e.,* the Released Parties, as described in Footnote 3 of this proposed exemption). The Applicant represents that this liability release (the Liability Release) was imposed by the Bankruptcy Court and the creditors and applies to all former holders of Old Unit Common Stock, not just the Plan. The Applicant states that such releases, which are generally applied to creditors in exchange for cash and other property (including warrants), are common in the context of bankruptcy reorganizations. Liability releases allow the debtor-in-possession to operate their business free from potential claims arising pre-bankruptcy, so long as all similarly-situated creditors and other claimants are treated equivalently. As a condition of this exemption, the Liability Release must be described to the Invested Participants in a clearly written communication from Unit Corporation.

Acceptance or rejection of the Warrants by the Invested Participants is a two-step process: first, the Warrants will be automatically accepted into the Plan by the Trustee where they will be held in a suspense account; and second, the Invested Participants will have the choice to either accept the Warrants and release their claims or reject the Warrants. If an Invested Participant makes no election, the Warrants will be deemed as having been accepted by the Invested Participant. However, neither step will happen unless and until the Department grants a final exemption.

As a condition of this proposed exemption, the acquisition of the Warrants by the Accounts of the Invested Participants must be implemented on the same material terms as the acquisition of the Warrants by all shareholders of Old Unit Common Stock. Further, each shareholder of Old Unit Common Stock, including each of the Invested Participants' Account, must receive the same proportionate number of Warrants based on the number of shares of Old Unit Common Stock held by each shareholder.

8. *Exercising the Warrants.* The Applicant states that the final exercise price for the Warrants is $63.74. Decisions regarding the exercise or sale of the Warrants can be made only by the individual Invested Participants in whose Accounts the Warrants are allocated. In this regard, an Invested Participant can exercise his or her Warrants only during an Exercise Period, which will begin after the effective date of a final exemption if granted by the Department, and end on the earliest of: (a) September 3, 2027; (b) the consummation of a cash sale (as defined in the Warrant Agreement); or (c) the consummation of a liquidation,

[5] At the time, the Plan's 4,932,864 shares represented approximately 9% of all outstanding Old Unit Common Stock.

[6] Jointly administered under Case No. 20–327401.

dissolution or winding up of Unit Corporation.

The Plan Trustee will not allow Invested Participants to exercise the Warrants held in their Plan Accounts if the fair market value of New Unit Common Stock is less than the exercise price of the Warrants. Each Warrant that is not exercised during the Exercise Period will expire, and all rights under the Warrants and the Warrant Agreement will cease upon the conclusion of the Exercise Period. This proposed exemption requires Unit Corporation to notify and inform each Invested Participant in writing at least thirty days before the conclusion of the Exercise Period that each Warrant held in the Invested Participant's Account will expire and all rights under the Warrants and the Warrant Agreement will cease upon the conclusion of the Exercise Period.

An Invested Participant may exercise all or any whole number of their Warrants at any time during the Exercise Period through: (a) written notice provided to Unit Corporation and the warrant agent, American Stock Transfer & Trust Company, LLC (the Warrant Agent); and (b) the Invested Participant's full payment of the Exercise Price, either by a transfer of funds or on a cashless basis subject to a cashless exercise ratio, as defined in the Warrant Agreement.[7] The Applicant represents that the Warrant Agent is independent of Unit Corporation and the Trustee. The Applicant also represents that the Warrant Agent has not and will not sell the Warrants. The Invested Participants may also sell the Warrants in over-the-counter (OTC) markets where sale prices for the Warrants will be determined by supply and demand and not by any independent valuation of the Warrants.

9. As noted above, the Plan held 4,932,864 shares (or approximately 9 percent) of Old Unit Common Stock before the Bankruptcy Filing. With the Warrant exchange rate set at 1 to .03460447, Invested Participants will receive approximately 170,709 Warrants.

10. According to the Applicant, since the effective date of the reorganization on September 4, 2020, the Reorganized Debtors and their advisors have been working to reconcile claims filed in the bankruptcy case, file objections to certain claims, and negotiate resolutions of disputed claims. On June 21, 2021, the Chapter 11 cases for all debtors other than Unit Petroleum Company were closed and the Unit Petroleum Company case (Case No. 20–32738) was the only remaining open case. The Reorganized Debtors have now completed the claims reconciliation process and anticipate filing a motion to close the Unit Petroleum Case.

11. *Selling the Warrants.* The Warrants can be sold, assigned, transferred, pledged, encumbered, or in any other manner transferred or disposed of, in whole or in part in accordance with the terms of the Warrant Agreement and all applicable laws.[8] In this regard, Invested Participants will have the right to sell the Warrants allocated to their Plan Accounts on the open market at any time before the Warrant expiration date in the same manner as other holders of the Warrants.

12. *Disclosures Associated with the Warrants.* As a condition of this exemption, the terms of the Warrants Offering must be described to the Invested Participants in clearly written communications containing all material terms provided by the Applicant. In addition to the prospectus for the Warrant Offering, Invested Participants must receive a separate communication from the Applicant that clearly explains all aspects of the Warrants Offering, including: (a) that Unit Corporation is granting the Warrants to former holders of Old Unit Common Stock; (b) how the Warrants work; (c) that the decision regarding whether to accept or reject the Warrants is the decision of the Invested Participant; and (d) the liability release described above.

The Independent Fiduciary

13. On September 23, 2020, Unit and the Committee retained Newport Trust Company of New York, NY (Newport) to serve as the Independent Fiduciary to the Plan with respect to the Proposed Transactions. Newport represents that it understands and acknowledges its duties and responsibilities under ERISA in acting as the Independent Fiduciary on behalf of the Plan, and that in this capacity it must act solely in the interest of the Invested Participants with care, skill, and prudence in discharging its duties.

14. Newport represents that it does not have any prior relationship with any parties in interest to the Plan, including Unit Corporation, or any Unit Corporation affiliates. In this regard, Newport represents that it is independent of, and unrelated to Unit Corporation, and that: (a) it does not directly or indirectly control, is not controlled by, and is not under common control with Unit Corporation; and (b) neither it, nor any of its officers, directors, or employees is an officer, director, partner or employee of Unit Corporation (or is a relative of such persons). Newport also represents that (a) the payment it receives as Independent Fiduciary is not contingent upon, or in any way affected by, the contents of its Independent Fiduciary Report, and (b) the total fee it has received from any party in interest, including the Plan, Unit Corporation, or any Unit Corporation affiliates, does not exceed 1% of its annual revenues from all sources based upon its prior income tax year.

15. *Newport represents:* (a) that no party related to Unit Corporation has, or will, indemnify Newport in whole or in part for negligence and/or for any violation of state or federal law that may be attributable to Newport in performing its duties as Independent Fiduciary on behalf of the Plan; (b) that it has not performed any prior work on behalf of Unit Corporation, or on behalf of any party related to Unit Corporation; (c) that it has no financial interest with respect to its work as Independent Fiduciary, apart from the express fees paid to Newport to represent the Plan with respect to the Proposed Transactions; (d) that it has not received any compensation or entered into any financial or compensation arrangements with Unit Corporation, or any parties related to Unit Corporation; and (e) that it will not enter into any agreement or instrument regarding the Proposed Transactions that violates ERISA section 410 or the Department's regulations codified in 29 CFR 2509.75–4.[9]

16. *Independent Fiduciary Duties.* As Independent Fiduciary to the Plan with respect to the Proposed Transactions, Newport must: (a) determine whether the Proposed Transactions are in the interests of the Plan and the Invested Participants; (b) determine whether the Plan may enter into the Proposed Transactions in accordance with the requirements of this exemption; and (c) submit its determinations to the Department in a report (the Independent

[7] The Applicant represents that a ''cashless basis'' transaction allows a warrant holder to exercise Warrants without a cash outlay. Under a cashless exercise, a Warrant holder may surrender a portion of their Warrants to cover the exercise price of other Warrants that they hold, rather than transferring funds to cover the Exercise Price.

[8] The Department notes that relief under this exemption does not extend to the sale of the Warrants, which must be executed as ''blind'' transactions.

[9] ERISA section 410 provides, in relevant part, that ''except as provided in ERISA sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning ERISA section 410(a)] shall be void as against public policy.''

Fiduciary Report) that includes a detailed analysis of the reasons why the Proposed Transactions are in the interests of, and protective of the rights of, the Plan and the Invested Participants, and a representation that the Invested Participants received all they were entitled to receive with respect to the Proposed Transactions. The Independent Fiduciary must review and confirm that the communications sent to participants meet the requirements of this exemption. Additionally, the Independent Fiduciary or an appropriate Plan fiduciary will monitor the holding and sale of warrants by the Plan in accordance with the obligations of prudence and loyalty under ERISA section 404(a) to ensure that the Proposed Transactions remain prudent, protective of, and in the interests of the participants. Finally, not later than 90 days after the end of the Exercise Period, the Independent Fiduciary must submit a written statement to the Department confirming and demonstrating that the Applicant has met all of the exemption's requirements.

17. *Independent Fiduciary Report.* On January 29, 2021, Newport completed its Independent Fiduciary Report, wherein it determined that the Proposed Transactions are prudent, in the interest of, and protective of, the Plan and the Invested Participants. In completing its Independent Fiduciary Report, Newport represents that it conducted a thorough due diligence process to evaluate the Proposed Transactions, which involved discussions and correspondence with representatives of Unit Corporation, Unit Corporation's outside counsel, and representatives of the Trustee. Newport represents that it also reviewed information provided by Unit Corporation and the Benefits Committee, as well as additional publicly available information.

In the Independent Fiduciary Report, Newport states that its recommendation to the Benefits Committee to pass through the decision whether to accept or reject the Warrants to Invested Participants comports with the Plan's standard practice of granting Invested Participants individual discretion over shareholder matters and with the Plan's standing practice for corporate actions within the Company Stock Fund. Newport further states that allowing the Plan to hold the Warrants places Invested Participants on equal footing with other non-Plan shareholders of Old Unit Common Stock, and that this pass-through empowers Invested Participants to make an election that is consistent with their particular economic interests. Newport further states that Invested Participants have historically enjoyed the same rights and privileges as shareholders outside the Plan.

Newport states that Invested Participants who choose to accept the Warrants could realize value through the future exercise or sale of the Warrants, while participants who choose to reject the Warrants would maintain their legal right to bring claims against Unit Corporation. Newport states that the terms and conditions of the Proposed Transactions require that no fees or commissions be paid by Invested Participants, and that Invested Participants will only be allowed to exercise the Warrants for economic gain. Newport further states that there is currently no public market for the Warrants or for New Unit Common Stock, and the terms of the Warrants do not entitle holders to ''put'' the Warrants to the Applicant.

Newport states that any shareholder who elects not to receive the Warrants would not waive any claims that could be brought against Unit Corporation and other Released Parties, including claims seeking restitution for losses on an individual or class action basis under securities law. Newport further states that Invested Participants who elect not to receive the Warrants would also not waive their right to file a claim seeking restitution for losses under ERISA.

Newport represents that the methodology used by Stout to determine the fair market value of the Warrants was reasonable, sound, and consistent with good valuation practices. In this regard, Newport states that the Black-Scholes formula used by Stout is commonly employed across the financial industry to establish the fair market value of equity options, including rights and warrants. Newport further states that Stout applied this methodology in an objective manner and exercised professional judgment to account for the Warrants' specific characteristics.

Newport notes that, as the Independent Fiduciary to the Plan with respect to the Proposed Transactions, it has the responsibility to determine whether to override the Plan's pass-through process and, thus, disregard participant's elections with respect to the receipt of the Warrants and the release of claims. Newport states that, based on the reported value of the Warrants and the uncertain economic value of the potential claims, it determined not to override the Plan's pass-through process, and therefore not to disregard Invested Participant elections in connection with the receipt of Warrants and the release of claims.

18. Newport states that it reviewed public information about the Applicant and the Plan and performed legal research related to the Applicant's active lawsuits to confirm that no active claims are pending that would potentially be released through receipt of the Warrants. Newport notes that, based on a review of the public record, there is no indication that the Applicant's financial difficulties were brought on by its mismanagement or any other inappropriate activities by the Applicant or any affiliated entity. Newport further states that there are no pending lawsuits or active court cases involving the Applicant aside from the Bankruptcy Filing.

19. Newport concludes that, based on this analysis and the assumption that the Applicant provides Invested Participants with the appropriate disclosures described above, it would be imprudent for Newport to disallow participants' rights to exercise their judgment with respect to the Warrants by overriding the Plan's pass-through process and disregard the Invested Participants' selections in connection with the receipt of Warrants and the release of claims based on the facts as they existed at the time of their analysis. However, as noted above, the Independent Fiduciary or an appropriate Plan fiduciary will monitor the holding and sale of Warrants by the plan in accordance with its obligations of prudence and loyalty under ERISA section 404(a) to ensure that the Proposed Transactions remain prudent, protective of, and in the interests of the participants.

ERISA Analysis

20. The acquisition and holding of the Warrants would violate certain prohibited transaction restrictions of ERISA. Although the Warrants constitute ''employer securities,'' as defined under ERISA section 407(d)(1), they do not satisfy the definition of ''qualifying employer securities,'' as defined under ERISA section 407(d)(5), because they are not stock or marketable debt securities. Under ERISA section 407(a)(1)(A), a plan may not acquire or hold any ''employer security'' that is not a ''qualifying employer security.'' In addition, ERISA section 406(a)(1)(E) prohibits the acquisition, on behalf of a plan, of any ''employer security in violation of section 407(a) of [ERISA].'' Finally, ERISA section 406(a)(2) prohibits a fiduciary who has authority or discretion to control or manage a plan's assets from permitting the plan to hold any ''employer security'' in violation of ERISA section 407(a). Therefore, the acquisition and holding

of the Warrants by the Plan would constitute prohibited transactions that violate ERISA sections 406(a)(1)(E) and 406(a)(2).

21. Furthermore, the acquisition of the Warrants would violate ERISA section 406(a)(1)(A). In relevant part, ERISA section 406(a)(1)(A) provides that a plan fiduciary shall not cause the plan to engage in a transaction if the fiduciary knows or should know that the transaction is a sale or exchange of any property between a plan and a party in interest. Because the Invested Participants who acquire the Warrants will release their claims against the Released Parties, the acquisition of the Warrants will constitute a sale or exchange of property between the Plan and Unit Corporation, a party in interest, in violation of ERISA section 406(a).

Statutory Findings

22. ERISA section 408(a) provides, in part, that the Department may not grant an exemption from the prohibited transaction provisions unless the Department finds that the exemption is administratively feasible, in the interest of affected plan and of its participants and beneficiaries, and protective of the rights of such participants and beneficiaries. Each of these criteria are discussed below.

23. *The Proposed Exemption Is ''Administratively Feasible.''* The Department has tentatively determined that the proposed exemption is administratively feasible. In this regard, the Department notes that the Independent Fiduciary must represent the interests of the Plan for all purposes with respect to the Proposed Transactions and must determine that the Proposed Transactions, including all terms and conditions of the proposed exemption are in the interests of the Plan and the Invested Participants.

24. *The Proposed Exemption Is ''In the Interests of the Plan.''* The Department has tentatively determined that the proposed exemption is in the interests of the Plan. In this regard, the Department notes that Invested Participants who choose to accept the Warrants could realize value through the future exercise or sale of the Warrants, while participants who choose to reject the Warrants would maintain their legal right to bring claims against Unit Corporation. Further, Invested Participants would pay no fees or commissions and will only be allowed to exercise the Warrants for economic gain. Absent the receipt of Warrants, the Invested Participants may not receive any value for the shares of Old Unit Common Stock they held before the Bankruptcy Filing.[10]

25. *The Proposed Exemption Is ''Protective of the Plan.''* The Department has tentatively determined that the proposed exemption is protective of the rights of the Invested Participants. In this regard, the Department notes that all decisions regarding the holding, exercise and disposition of the Warrants will be made by the Invested Participants. Further, this proposed exemption requires the terms of the Warrants to be described in clearly-written communications provided to the Invested Participants by the Applicant. Finally, the Department notes that the Trustee will not allow Invested Participants to exercise the Warrants unless the fair market value of New Unit Stock exceeds the exercise price of the Warrants on the date of exercise and Invested Participants may choose to reject the Warrants and maintain their legal right to bring claims against Unit Corporation.

Summary

26. Based on the conditions included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant would satisfy the statutory requirements for an individual exemption under ERISA section 408(a).

Proposed Exemption

The Department is considering granting an exemption under the authority of ERISA section 408(a) and Code section 4975(c)(2) and in accordance with its exemption procedures set forth in 29 CFR part 2570, subpart B (29 CFR part 2570, subpart B (75 FR 66637, 66644, October 27, 2011)).

Section I. Definitions

(a) The term ''Bankruptcy Filing'' means Unit Corporation's May 22, 2020 filing for relief under chapter 11 of title 11 of the United States Code, in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, under Case No. 20–327401.

(b) The term ''Exercise Period'' means the period during which Invested Participants can exercise their Warrants, which will end on the earliest of the following: (1) September 3, 2027; (2) the consummation of a cash sale (as defined in the Warrant Agreement); or (3) the consummation of a liquidation, dissolution or winding up of Unit Corporation.

(c) The term ''Invested Participants'' means Plan participants who held shares of Old Unit Common Stock as of the date of the Bankruptcy Filing.

(d) The term ''the Plan'' means the Unit Corporation Employees' Thrift Plan.

(e) The term ''Independent Fiduciary'' means Newport Trust Company of New York, NY (Newport) or a successor Independent Fiduciary, to the extent Newport or the successor Independent Fiduciary continues to serve in such capacity, and who:

(1) Is not an affiliate of Unit Corporation and does not hold an ownership interest in Unit Corporation or affiliates of Unit Corporation;

(2) Was not a fiduciary with respect to the Plan before its appointment to serve as the Independent Fiduciary;

(3) Has acknowledged in writing that it:

(i) Is a fiduciary with respect to the Plan and has agreed not to participate in any decision regarding any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

(ii) Has appropriate technical training or experience to perform the services contemplated by the exemption;

(4) Has not entered into any agreement or instrument that violates the prohibitions on exculpatory provisions in ERISA section 410 or the Department's regulation relating to indemnification of fiduciaries at 29 CFR 2509.75–4;

(5) Has not received gross income from Unit Corporation (including Unit Corporation affiliates) for any fiscal year in an amount that exceeds two percent (2%) of the Independent Fiduciary's gross income from all sources for the prior fiscal year. This provision also applies to a partnership or corporation of which the Independent Fiduciary is an officer, director, or 10 percent (10%) or more partner or shareholder, and includes as gross income amounts received as compensation for services provided as an independent fiduciary under any prohibited transaction exemption granted by the Department; and

(6) No organization or individual that is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or ten percent (10%) or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from Unit Corporation or from affiliates of Unit Corporation while serving as an Independent Fiduciary. This prohibition

[10] The Department notes that in proposing this exemption it is not expressing any views regarding whether Invested Participants should ultimately accept or reject the Warrants.

will continue for a period of six months after the party ceases to be an Independent Fiduciary and/or the Independent Fiduciary negotiates any transaction on behalf of the Plan during the period that the organization or individual serves as an Independent Fiduciary.

(f) The term ''Released Parties,'' as referenced below and in footnote 3 above, means: (1) Unit Corporation; (2) the Reorganized Unit Corporation; (3) the Debtor-in-possession Agent; (4) the Debtor-in-possession Lenders; (5) the RBL Agent; (6) the RBL Lenders; [11] (7) the Consenting Noteholders; (8) the Exit Facility Agent; (9) the Exit Facility Lenders; and (10) the Subordinated Notes Indenture Trustee.

(g) The term ''Unit Corporation'' means Unit Corporation and any affiliate of Unit Corporation.

(h) The term ''Warrants'' means the Warrants issued by Unit Corporation in connection with the Bankruptcy Filing that entitle their registered holders to receive the Warrants, pursuant to an exchange rate of 1 to .03460447, where one share of Old Unit Common Stock will convert to .03460447 Warrants, through the payment of an Exercise Price during the Exercise Period.

Section II. Covered Transactions

If the proposed exemption is granted, the restrictions of ERISA sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A), shall not apply to: (1) the acquisition by the Invested Participant Accounts, of the Warrants issued by Unit Corporation, the Plan sponsor, in connection with the Bankruptcy Filing, in exchange for a waiver of claims against Released Parties; and (2) the holding of the Warrants by the Plan, provided that the conditions set forth in section III are met.

Section III. Conditions

(a) The acquisition of the Warrants by the Accounts of the Invested Participants is implemented on the same material terms as the acquisition of the Warrants by all shareholders of Old Unit Common Stock;

(b) The acquisition of the Warrants by the Accounts of Invested Participants resulted from an independent corporate act of Unit Corporation;

(c) Each shareholder of Old Unit Common Stock, including each of the Accounts of the Invested Participants, receives the same proportionate number of Warrants, and this proportionate number of Warrants is based on the number of shares of Old Unit Common Stock held by each shareholder;

(d) The Warrants are acquired pursuant to, and in accordance with, provisions under the Plan for the individually-directed investment of the Accounts by the Invested Participants whose Accounts in the Plan held Old Unit Common Stock;

(e) The decision regarding the acquisition, holding and disposition of the Warrants by the Accounts of the Invested Participants have been and will continue to be made by the Invested Participants whose Accounts received the Warrants;

(f) If any of the Invested Participants fail to provide the Trustee with instructions to exercise or sell the Warrants received by July 30, 2027, the Warrants will be automatically sold in blind transactions on the New York Stock Exchange, and the sales proceeds will be distributed pro-rata to the Accounts of the Invested Participants whose Warrants are sold;

(g) No brokerage fees, commissions, subscription fees, or other charges have been paid or will be paid by the Plan or the Invested Participants' Accounts for the acquisition and holding of the Warrants, and no commissions, fees, or expenses have been paid or will be paid by the Plan or the Invested Participants' Accounts to any related broker in connection with the sale or exercise of any of the Warrants or the acquisition of the New Unit Common Stock through the exercise of the Warrants;

(h) Unit Corporation does not influence any Invested Participant's election with respect to the Warrants;

(i) The terms of the Offering of the Warrants are described to the Invested Participants in clearly-written communications from Unit Corporation containing all material terms of the Warrant Offering. In addition to the prospectus for the Warrant Offering, Invested Participants must receive a separate communication from Unit Corporation that clearly explains all aspects of the Warrants Offering, including: (1) that Unit Corporation is granting the Warrants to former holders of Old Unit Common Stock; (2) how the Warrants work; (3) that the decision regarding whether to accept or reject the Warrants is made solely by the Invested Participants; and (4) the liability release. The Independent Fiduciary described in (j) below must review and confirm that the communications sent to participants meet the requirements of this exemption;

(j) An Independent Fiduciary that is unrelated to Unit Corporation and/or its affiliates and acting solely on behalf of the Plan has determined that:

(1) The Proposed Transactions are prudent, in the interest of, and protective of the Plan and its participants and beneficiaries; and

(2) The Plan may enter into the Proposed Transactions in accordance with the requirements of this exemption; and

(k) The Independent Fiduciary must document its initial and final determinations in written reports that include a detailed analysis regarding whether the Proposed Transactions are in the interests of the Plan and the Invested Participants, and protective of the rights of Invested Participants of the Plan;

(l) The Independent Fiduciary or an appropriate Plan fiduciary will monitor the holding and sale of warrants by the plan in accordance with the obligations of prudence and loyalty under ERISA section 404(a) to ensure that the Proposed Transactions remain prudent, protective of, and in the interests of the participants.

(m) No later than 90 days after the end of the Exercise Period, the Independent Fiduciary must submit a written statement to the Department confirming and demonstrating that all requirements of the exemption have been met. In its written statement, the Independent Fiduciary must confirm that all Invested Participants receive everything to which they are entitled pursuant to the terms of this exemption, the Warrant Agreement, and any other documents relevant to this exemption.

(n) The Independent Fiduciary must represent that it has not and will not enter into any agreement or instrument that violates ERISA section 410 or 29 CFR 2509.75–4;

(o) At least thirty days before the conclusion of the Exercise Period, Unit Corporation must notify and inform each Invested Participant in writing that each Warrant held in the Invested Participant's Account will expire and all rights under the Warrants and the Warrant Agreement will cease upon the conclusion of the Exercise Period; and

(p) All of the material facts and representations set forth in the Summary of Facts and Representations are true and accurate. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described by the Applicant in the application, the exemption will cease to apply as of the date of the change.

Effective Date: This exemption, if granted will be effective on the date the Department publishes a grant notice in the **Federal Register** and will continue until the date all Warrants are exercised, sold, or expire.

[11] RBL stands for ''Reserve Based Lending.''

Notice to Interested Persons

Those persons who may be interested in the publication in the **Federal Register** of the notice of proposed exemption (the Notice) include participants and beneficiaries of the Plan. The Applicant will provide notification to interested persons by electronic mail, and first-class mail within ten (10) calendar days of the date of the publication of the Notice in the **Federal Register**. The mailing will include a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise interested persons of their right to comment and/or to request a hearing.

The Department must receive all written comments and requests for a hearing by March 27, 2023.

All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as a name, address, Social Security number, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

For Further Information Contact: Mr. Joseph Brennan of the Department, telephone (202) 693–8456. (This is not a toll-free number.)

The Liberty Media 401(k) Savings Plan and the Liberty Media 401(k) Savings Plan Trust Located Englewood, Colorado

[Application No. D–12023]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). The proposed exemption would permit, for the period beginning May 18, 2020, and ending June 5, 2020: (1) the Liberty Media 401(k) Savings Plan's (the Plan) acquisition of certain stock subscription rights (the Rights) to purchase shares of the Series C Liberty SiriusXM common stock (the Series C Liberty SiriusXM Stock), in connection with a rights offering (the Rights Offering) by Liberty Media Corporation (LMC); and (2) the Plan's holding of the Rights during the subscription period of the Rights Offering, provided that certain conditions are satisfied.

Summary of Facts and Representations [12]

Background

1. LMC (or the Applicant) is a Delaware corporation with its principal place of business in Englewood, Colorado. LMC is primarily engaged in media, communications and entertainment businesses.

2. LMC sponsors the Plan. The Plan is a defined contribution plan covering employees of LMC and qualifying subsidiaries. As of December 31, 2020, the Plan had total assets of $161,681,000 and 1,015 participants.

3. The Plan is administered by an administrative committee (the Administrative Committee). The Plan's assets are held in the Liberty Media 401(k) Savings Plan Trust (the Trust). Fidelity Management Trust Company is the Plan's trustee (the Trustee or Fidelity), and it executes investment directions in accordance with Plan participants' written instructions.

4. The Plan permits participants to direct the investment of their Plan accounts, including their 401(k) contributions, any employer contributions, and any rollover contributions, into one of 27 investment alternatives, which includes certain employer securities issued by LMC and employer securities issued by other employers participating in the Plan. The Plan allows the employer to contribute any property to the Plan that the Trustee is authorized to invest. As of May 13, 2020, the Plan held a total of $7,186,824 in Series C Liberty SiriusXM Stock, which represented 6% of total Plan assets.

5. Solely with respect to the Rights described below, the Plan permitted the Rights Offering because the Trustee was authorized to receive the Rights. The Administrative Committee acted as trustee of the temporary separate trust established to hold the Rights (the Rights Trust), and Fidelity acted as custodian of those Rights.

Description of Liberty SiriusXM Stock

6. The Series A, B, or C Liberty SiriusXM stock is LMC stock that is intended to track and reflect the separate economic performance of the business, assets, and liabilities of Sirius XM Holdings. Sirius XM Holdings operates two audio entertainment businesses: Sirius XM and Pandora. As of February 10, 2020, Sirius XM Holdings' investments included $75 million in SoundCloud.

The Rights Offering

7. LMC conducted the Rights Offering with holders of shares of Series C Liberty SiriusXM Stock. Each holder of Series A Liberty SiriusXM Stock, Series B Liberty SiriusXM Stock, and Series C Liberty SiriusXM Stock, as of May 13, 2020, received 0.0939 of a Right (rounded up to the nearest whole Right).[13] Each Right entitled the holder to purchase one share of Series C Liberty SiriusXM Stock at a subscription price of $25.47, which was equal to an approximate 20% discount to the volume weighted average trading price of Series C Liberty SiriusXM Stock for the 3-day trading period ending on and including May 9, 2020. The Rights Offering for 231,861,714 shares of Series C Liberty SiriusXM Stock commenced on May 18, 2020, and remained open until June 5, 2020. The market closing price for each share of Series C Liberty SiriusXM Stock on these dates was $32.59 and $38.88, respectively.

8. According to the Applicant, Plan participants were notified of the Rights Offering, and of the procedure for instructing Fidelity of the participant's desires with respect to the Rights. Plan participants received the following documents: (a) Questions and Answers, which explained the Rights issuance and participant's option to exercise or sell the Rights attributable to the employer securities allocated to the participant's Plan account; (b) the Rights Offering Instructions, which explained the steps for the participant to take to exercise or sell the Rights; and (c) the Prospectus (within LMC's Form S–3 as filed with the Securities and Exchange Commission on May 14, 2020), which was made available to all shareholders explaining the Rights issued by LMC. The Applicant represents that these materials were reviewed in detail by the Applicant, the Plan administrator, the Trustee, the outside counsel addressing the Rights Offering, and the Applicant's outside benefits counsel. All involved Plan participants were notified in advance of the procedure for instructing

[12] The Department notes that the availability of this exemption, if granted, is subject to the express condition that the material facts and representations contained in application D–12023 (the Application) are true and complete, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the Application, the exemption will cease to apply as of the date of the change.

[13] The ticker symbols for the stock were as follows: Series C Liberty SiriusXM Stock (''LSXMK''), Series A Liberty SiriusXM Stock (''LSXMA''), and Series B Liberty SiriusXM Stock (''LSXMB'').

Fidelity of the participants' desires with respect to the Rights.

9. The Applicant represents that the acquisition of the Rights by the Plan was consistent with provisions of the Plan for the individually-directed investment of participant accounts. Under the terms of the Plan and the Trust, the Trustee passed through its right to vote or take action on employer securities to the Plan participants. Each participant could then decide whether to exercise or sell the Rights attributable to the shares of employer securities allocated to the participant's account.

10. Due to securities law restrictions, certain participants who were reporting persons under Rule 16(b) [14] of the Securities Exchange Act of 1934 (Rule 16(b)) with respect to LMC did not have the right to instruct Fidelity to either sell or exercise the Rights credited to their Plan Accounts. As provided by the Plan, and as directed by the Administrative Committee, Fidelity sold the Rights credited to these Rule 16(b) participant accounts, along with the Rights of other participants who did not elect to sell or exercise the Rights credited to their accounts, during the last few days of the Rights Offering period.

Temporary Investment Funds

11. The Plan established two temporary investment funds to accommodate the Rights. The first fund, the ''Rights Holding Fund,'' was a separate fund established under the Rights Trust, to hold the Rights when they were issued. Rights were credited to participants' accounts based on their respective holdings of Series C Liberty SiriusXM Stock as of the record date. The second fund, the ''Rights Receivable Fund,'' received the Series C Liberty SiriusXM Stock shares following the exercise of the Rights on June 5, 2020 (the last day of the Rights Offering period), as directed by the Plan participants.

Participants Who Elected To Exercise Rights

12. With the exception of those reporting persons under Rule l6(b), each participant in the Plan could elect to exercise any percentage of the Rights allocated to his or her Plan account. A participant could exercise the Rights by speaking to a Fidelity representative at any time before 4:00 p.m. Eastern Time, on June 1, 2020 (the ''Election Close-Out Date''). Plan participants ended up exercising 3,219 rights.

13. For those individuals with insufficient funds to permit the exercise of the entire elected amount of Rights, Fidelity exercised as many Rights as the participant's account balance permitted.

14. On or about June 4, 2020, the Rights to be exercised and necessary funds were submitted by Fidelity to Broadridge Corporate Issuer Solutions, Inc. (Broadridge), the subscription agent, for the purchase of shares. Plan participants' balances in the Rights Holding Fund were reduced by the number of Rights exercised on the participant's behalf. Upon receipt of the new shares, the Rights Receivable Fund was closed and the newly-received shares were allocated to the participants' accounts.

15. According to the Applicant, those participants who elected to exercise only a portion of their Rights could later elect to exercise additional Rights to the extent that sufficient time existed before the Election Close-Out Date. In addition, on or about June 2 through June 5, 2020, Fidelity sold 17,808 unexercised Rights on the NASDAQ Global Market (the NASDAQ) in ''blind transactions'' for an average price of $11.79 per Right for a total price $209,956.32. The proceeds from the sales were allocated proportionally to the relevant participants' accounts. Thus, all unexercised Rights were sold by Fidelity, and no Rights expired.[15]

Participants Who Elected To Sell Rights

16. In order to sell his or her Rights, a Plan participant was required to: (a) contact a Fidelity representative or log on to the Fidelity website for the Plan; and (b) specify the whole percentage of the Rights the participant desired to sell. The selling period for participants ran from the date that Fidelity first started accepting participant directions (which was May 26, 2020, through June 1, 2020). A total of 1,506 Rights (rounded to the nearest whole Right) were sold by Fidelity at Plan participants' directions.

17. According to the Administrative Committee's Chairman, the Plan fiduciary or fiduciaries responsible for overseeing the Plan's participation in the Rights offering prudently and loyally determined on behalf of the Plan that: (a) the Plan's acquisition, holding and sale of the Rights could proceed on the terms established by such fiduciaries, and (b) the Plan's participants received all they were entitled to under the Rights arrangement (*i.e.,* the Participants got at least the fair market value for the exercise and sales of the Rights).

18. LMC represents that it filed the Exemption Application after the last day of the Offering Period to provide up to date information about the Offering Period with respect to the Rights Offering.

ERISA Analysis

19. ERISA section 406(a)(1)(E) provides that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction if he or she knows or should know that such transaction constitutes the acquisition, on behalf of the plan, of any employer security in violation of ERISA section 407(a). ERISA section 406(a)(2) provides that a fiduciary of a plan shall not permit the plan to hold any employer security if he or she knows or should know that holding such security violates ERISA section 407(a).

20. ERISA section 407(a)(1)(A) provides that a plan may not acquire or hold any ''employer security'' which is not a ''qualifying employer security.'' ERISA section 407(d)(1) defines ''employer securities,'' in relevant part, as securities issued by an employer of employees covered by the plan, or by an affiliate of such employer. ERISA section 407(d)(5) provides, in relevant part, that ''qualifying employer securities'' are stock or marketable obligations. Because the Rights do not constitute either stock or marketable obligations for indebtedness, the Rights are not ''qualifying employer securities.'' However, once a participant exercises his or her Rights and the Plan acquires the Series C Liberty SiriusXM Stock on behalf of such participant, then a violation of ERISA sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) occurs. If granted, the exemption will be effective for the period May 18, 2020, through June 5, 2020.

Department's Note: This proposal, if granted, does not provide an exemption from any other provision of ERISA or the Code, including each Plan fiduciary's duties of prudence and loyalty in connection with the exercise or sale of the rights.

[14] Rule 16(b) requires an officer, director, or any shareholder holding more than 10% of the outstanding shares of a publicly-traded company who makes a profit on a transaction with respect to the company's stock during a given six month period, to pay the difference back to the company.

[15] The Applicant represents that the brokerage services and fees received by either Fidelity or Broadridge in connection with the sale of the Rights are exempt under ERISA section 408(b)(2). However, the Department is not providing any relief for the receipt of any commissions, fees, or expenses in connection with the sale of the Rights in blind transactions to unrelated third parties on the NASDAQ, beyond that provided under ERISA section 408(b)(2). In this regard, the Department is not opining on whether the conditions set forth in ERISA section 408(b)(2) and the Department's regulations under 29 CFR 2550.408(b)(2), have been satisfied.

Statutory Findings

21. ERISA section 408(a) provides, in part, that the Department may not grant an exemption unless the Department finds that the exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries, which criteria are discussed below.

a. *The Proposed Exemption Is ''Administratively Feasible.''* The Department has tentatively determined that the proposal is administratively feasible because, among other things, the Plan participants received the Rights pursuant to LMC's independent corporate act in which all shareholders, including the Plan participants, were treated in a like manner with respect to the acquisition and holding of the Rights, with two minor exceptions: (1) the oversubscription option available under the Rights Offering was not available to participants in the Plan; [16] and (2) certain participants deemed to be reporting persons under Rule 16(b) with respect to LMC did not have the right to instruct Fidelity to sell or exercise the Rights credited to their Plan Accounts.

b. *The Proposed Exemption Is ''In the Interest of the Plan.''* The Department has tentatively determined that the proposed exemption is in the interests of the participants and beneficiaries of the Plan because, among other things: each Plan participant was able to make an independent decision whether to liquidate his or her account assets to purchase additional employer securities at a discount; each Plan participant received their Rights at no additional cost; the participants who exercised their Rights paid $25.47 per share of the Series C Liberty SiriusXM Stock, which was equal to an approximate 20% discount to the volume weighted average trading price of Series C Liberty SiriusXM Stock for the 3-day trading period ending on and including May 9, 2020; and those who sold their Rights received an average of $11.79 for each Right.

c. The Proposed Exemption Is ''Protective of the Plan.'' The Department has tentatively determined that the proposed exemption is protective of the rights of participants and beneficiaries because, among other things, the Rights were sold by Fidelity on the NASDAQ for a discounted market value, in arms' length transactions between unrelated parties, and all shareholders were treated in the same manner during the Rights Offering's process. Furthermore, the Plan did not pay any fees or commissions with respect to the acquisition or holding of the Rights, and it did not pay any commissions to any affiliate of LMC in connection therewith. Finally, the Plan did not pay any fees in connection with the exemption request.

Summary

22. Based on the conditions that are included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant would satisfy the statutory requirements for an individual exemption under ERISA section 408(a).

Proposed Exemption

Section I. Transactions

If the proposed exemption is granted, for the period beginning May 18, 2020, and ending June 5, 2020, the restrictions of ERISA sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) shall not apply, to:

(a) The acquisition by the Plan of certain stock subscription rights (the Rights), pursuant to a stock rights offering (the Offering) by Liberty Media Corporation (LMC) to purchase shares of Series C Liberty SiriusXM common stock; and

(b) The holding of the Rights by the Plan during the subscription period of the Offering, provided the conditions set forth below in section II are satisfied.

Section II. Conditions

(a) The Plan's acquisition of the Rights resulted solely from an independent corporate act of LMC's Board of Directors;

(b) All holders of Series A, Series B, or Series C Liberty SiriusXM common stock, including the Plan, were issued the same proportionate number of Rights based on the number of shares of the Series A, B, or C Liberty SiriusXM Stock held by each such shareholder;

(c) For purposes of the Rights Offering, all holders of Series A, B, or C Liberty SiriusXM Stock, including the Plan, were treated in a like manner, with two exceptions:

(1) The oversubscription option available under the Rights Offering was not available to participants in the Plan; and

(2) Certain participants deemed to be reporting persons under Rule 16(b) [17] of the Securities Exchange Act of 1934 (Rule 16(b)) with respect to LMC did not have the right to instruct Fidelity to either sell or exercise the Rights credited to their Plan Accounts;

(d) The acquisition of the Rights by the Plan was consistent with provisions of the Plan for the individually-directed investment of participant accounts;

(e) The Liberty Media 401(k) Savings Plan administrative committee did not exercise any discretion with respect to the acquisition, holding or sale of the Rights by the Plan;

(f) The Plan fiduciary or fiduciaries responsible for overseeing the Plan's participation in the Rights offering prudently and loyally determined on behalf of the Plan that: (1) the Plan's acquisition, holding and sale of the Rights could proceed on the terms established by such fiduciaries, and (2) the Plan's participants received all they were entitled to under the Rights arrangement (*i.e.,* the Participants got at least the fair market value for the exercise and sales of the Rights);

(g) Each Plan participant made an independent decision whether to liquidate his or her account assets in the Rights Holding Fund to purchase additional shares of Series C Liberty SiriusXM common stock at a discount;

(h) The Plan did not pay any fees or commissions to LMC and/or its affiliates in connection with the acquisition, holding, or sale of the Rights;

(i) The Plan did not pay any fees in connection with the exemption request; and

(j) All material facts and representations set forth in the Summary of Facts and Representations are true and accurate.

Effective Date: This proposed exemption, if granted, will be in effect from May 18, 2020, the date that the Plan received the Rights, through June 5, 2020, the last date the Rights were sold on the NASDAQ.

Notice to Interested Persons

The Applicant will provide notice of the proposed exemption to all interested persons within 15 days of the publication of the notice of proposed exemption in the **Federal Register**. The notice will be given to interested persons by first class U.S. mail at their last known mailing address. The notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform

[16] An oversubscription option, or privilege, allows shareholders (with this option or privilege) to buy shares that were not purchased by other shareholders.

[17] Rule 16(b) requires an officer, director, or any shareholder holding more than 10% of the outstanding shares of a publicly-traded company to disgorge any profit made on a purchase and sale, or sale and purchase, of the company's stock within any period of less than six months.

interested persons of their right to comment on the pending exemption. Written comments are due by March 27, 2023.

All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly-disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

For Further Information Contact: Frank Gonzalez of the Department, telephone (202) 693–8553. (This is not a toll-free number.)

The Occidental Petroleum Corporation Savings Plan and the Anadarko Employee Savings Plan Located in Houston, TX

[Application Nos. D–12032 and D–12033, Respectively]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). As more fully described below, this proposed exemption, if granted, would permit: (1) the acquisition, on August 3, 2020, by the Occidental Petroleum Corporation Savings Plan (the Oxy Plan) and the Anadarko Employee Savings Plan (the Anadarko Plan; together, the Plans), of warrants (the Warrants) issued by Occidental Petroleum Company; and (2) the holding of the Warrants by the Plans, provided that the conditions set forth below are met.

Summary of Facts and Representations [18]

The Applicants

1. The Applicants are: (a) the Occidental Petroleum Corporation (Oxy); (b) the Anadarko Petroleum Corporation (Anadarko), a wholly owned subsidiary of Oxy; and (c) the Oxy Plan and the Anadarko Plan (the Plans), which are sponsored by Oxy and Anadarko, respectively.

2. Oxy is an international energy company headquartered in Houston, Texas. Oxy common stock is publicly-traded on the New York Stock Exchange (the NYSE) under the ticker symbol ''OXY.'' As of July 6, 2020, there were 29,023 stockholders of record and approximately 918,533,498 million shares of Oxy common stock issued and outstanding.

The Plans

3. The Oxy Plan is a participant-directed stock bonus plan that allows participants to invest in an investment fund holding common stock issued by Oxy. The Bank of New York Mellon serves as the Oxy Plan's directed trustee (the Trustee). As of August 28, 2020, the Oxy Plan had 12,604 participants and total assets having a fair market value of $2,055,378,936. As of that same date, the fair market value of the Oxy common stock held by the Oxy Plan was $170,813,875, or 8.3% of the fair market value of the Oxy Plan's assets.

4. The Anadarko Plan is a participant-directed plan that permits participants to invest in an investment fund holding common stock issued by Anadarko. As of August 28, 2020, the Anadarko Plan had 3,132 participants and total assets of $693,248,177. Fidelity Management Trust Company also served as the Plan's directed Trustee. On August 28, 2020, the fair market value of Oxy common stock in the Anadarko Plan was $2,077,278, and it represented 0.3% of the fair market value of the Anadarko Plan's assets. After August 28, 2020, the Anadarko Plan was terminated.

5. The Plans are administered by the Occidental Petroleum Corporation Pension and Retirement Plan Administrative Committee (the Administrative Committee). The Occidental Petroleum Corporation Pension and Retirement Trust and Investment Committee (the Investment Committee) has authority over the decisions relating to the investment of the Plans' assets.

Issuance of Warrants

6. On June 26, 2020, Oxy announced that its Board of Directors had declared a distribution of Warrants to its common stockholders to purchase additional shares of Occidental's common stock, as of July 6, 2020 (the Record Date). The Warrants have a seven-year term and expire on August 3, 2027. Recipients may exercise the Warrants to purchase additional shares of Oxy common stock at the exercise price of $22 per share or sell the Warrants at the prevailing market price on the NYSE.[19]

7. On August 3, 2020, Oxy distributed the Warrants. Stockholders of record, including the Plans, received 1/8th (12.5%) of a Warrant for each share of Oxy common stock held as of the Record Date. Each Oxy common stockholder, including the Plans, received the same proportionate number of Warrants based on the number of shares of Oxy common stock held as of the Record Date. The Plans and the other stockholders received the Warrants automatically, because of Oxy's unilateral and independent corporate act, and without any action on their part.

8. On August 3, 2020, because of Oxy's distribution of the Warrants, the Oxy Plan received 1,476,172 Warrants based on its holding of 11,809,376 shares of Oxy common stock. The Anadarko Plan received 26,601 Warrants based on its holding of 212,813 shares of Oxy common stock. Each Plan then established a Warrant account to reflect their respective participants' proportionate interest in the Warrants. All stockholders, including each Plan participant, received 1/8th of a Warrant for every share of common stock of which they were the record holder as of July 6, 2020.

9. On August 3, 2020, the Plans provided notices [20] to affected participants informing them: (a) of the Warrants, the Warrant account, and the engagement of Fiduciary Counselors Inc. (FCI), a qualified independent fiduciary within the meaning of 29 CFR 2570.31(j), as the independent fiduciary; (b) that FCI would determine whether the Warrants should be held, exercised, or sold; and (c) that Plan participants could obtain more information by contacting their respective Plan representative at the provided telephone number.

10. The Plans paid no fees or commissions in connection with the acquisition and holding of the Warrants. On August 4, 2020, the Warrants began regular trading on the NYSE, under the ticker symbol ''OXY WS.'' The average of the highest and lowest trading prices of the Warrants on the NYSE on August 4, 2020, the first trading date following the distribution of the Warrants, was $4.95 per Warrant share. The August 4, 2020, closing price for OXY stock on the NYSE was $15.74. As noted above, the

[18] The Department notes that the availability of this exemption, if granted, is subject to the express condition that the material facts and representations made by the Applicants and contained in applications D–12022 and D–12033 are true and complete, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply as of the date of the change.

[19] As of the Record Date, the closing price for Oxy common stock on the NYSE was $18.18 per share.

[20] Active participants were provided notices via email while non-active participants were provided notices at their last known address via the United States Postal Service First Class Mail.

Warrants permitted their holder to purchase OXY common stock for $22 per share.

The Independent Fiduciary

11. After reviewing proposals submitted by independent fiduciary candidates, the Investment Committee exercised its authority under the terms of the Plans to appoint FCI, a registered investment adviser, as the qualified independent fiduciary, on July 22, 2020. The Applicants represent that the Investment Committee selected FCI based on its proposal and experience in making decisions regarding the acquisition, holding, and disposition of warrants by plans. The Applicants also represent that the appointment of FCI to act as investment manager with respect to the acquisition, holding and disposition of the Warrants is consistent with the Plans' documents.

12. Under the terms of its engagement, FCI serves as ''investment manager,'' as defined in ERISA section 3(38), and is a fiduciary, as defined in ERISA section 3(21), with responsibility to: (a) direct the Plans' Trustees to receive and hold the Warrants on behalf of the Plans and determine whether the Warrants should continue to be held; (b) determine whether and when to exercise some or all of the Warrants and direct the Plans' Trustees, accordingly; and (c) determine whether and when to sell some or all of the Warrants and direct the Plans' Trustees, accordingly.

13. FCI represents that it is not related to or affiliated with any of the other parties to the transactions, and it has not previously been retained to perform services with respect to the Plans or any other employee benefit plan sponsored by Oxy or Anadarko. FCI also represents that: (a) it is independent of and unrelated to Oxy, Anadarko, and the Plans, and does not directly or indirectly control, is not controlled by, and is not under common control with, Oxy or Anadarko; (b) neither it, nor any of its officers, directors, or employees is an officer, director, partner, or employee of Oxy or Anadarko (or is a relative of such persons); (c) it does not directly or indirectly receive any consideration for its own account in connection with its services related to the Plans or the Warrants, except compensation from Oxy for such services; (d) its compensation for services is not contingent upon or in any way affected by its decisions; (e) the percentage of its 2020 gross revenues derived from any party in interest and affiliates involved in the exemption transactions was 2.08% of FCI's 2019 gross revenues; and (f) it understands and acknowledges its duties and responsibilities under ERISA in acting as a fiduciary on behalf of the Plans in connection with the Warrants.

14. This proposal requires that FCI's Independent Fiduciary Engagement Agreement does not: (a) include any indemnification provisions that limit FCI's liability if FCI acts negligently in performing its duties on behalf of the Plans, nor (b) contain any provision that caps FCI's liability to the Plans. In addition, FCI represents that it has not and will not enter into any agreement or instrument that violates ERISA section 410 or the Department's Regulation section 2509.75–4.[21]

15. This exemption requires that no party related to this exemption application has, or will, indemnify FCI, in whole or in part, for negligence and/or for any violation of state or federal law that may be attributable to FCI in performing its duties. In addition, no contract or instrument may purport to waive any liability under state or federal law for any such violation.

FCI's Disposition of Warrants

16. As documented in the Independent Fiduciary Report, FCI conducted a due diligence process in evaluating the Warrants on behalf of the Plans. This process included discussions and correspondence with representatives of the Plans and Oxy, the Plans' Trustees and the Plans' recordkeepers. FCI also reviewed publicly-available information and Plan-related information provided by Oxy. FCI considered four alternatives (separately referred to herein as an ''Alternative'' or collectively referred to herein as the ''Alternatives'') for the Warrants on behalf of the Plans: (a) holding the Warrants; (b) exercising the Warrants; (c) selling some Warrants on the NYSE at the prevailing market price and exercising the remaining Warrants; and (d) selling all of the Warrants on the NYSE at the prevailing market price.

Regarding Alternative (a) above, FCI represents that holding the Warrants pending their sale or exercise would have resulted in the Plans realizing no immediate monetary benefit for the Warrants they received. Further, the value of the Warrants at some future date is highly speculative; therefore, holding the Warrants involved delay and unwarranted risks, including the possibility that the price of Oxy stock would not exceed the Warrants' $22.00 per share exercise price before they expired. Based on these factors, FCI determined that continuing to hold the Warrants was an unacceptable alternative for the Plans.

FCI represents that Alternative (b) above was not feasible, because each Plan was amended to establish a separate Warrant account that initially held only the Warrants. Therefore, no cash was available to exercise the Warrants without selling some of them first.

Regarding Alternative (c) above, FCI could have directed the Trustee for each of the Plans to sell some portion of the Warrants to generate cash. Then, using the cash received from the sale of the Warrants, the Plans could exercise the remaining Warrants to purchase additional Oxy common stock at a price of $22 per share. However, FCI determined that immediately exercising the Warrants at a price of $22.00 per share when the underlying stock was trading at a price well below that price did not make economic sense. When FCI made this determination, Oxy stock was trading at $15.25 per share, and by September 15, 2020, the price had declined to $10.91 per share. Waiting until the price exceeded $22.00 per share would have involved an indefinite delay with no assurance of when or whether that event would occur, including whether it would occur before Warrants expired. It also was possible that, exercising the Warrants at some future point could generate higher proceeds than simply selling the Warrants when the price of Oxy stock exceeded $22.00 per share.

Regarding Alternative (d) above, the Warrants would be sold on the NYSE in a timely manner at prevailing market prices. Proceeds from the sale would then be invested in accordance with the Plans' governing documents. FCI determined that the benefits of selling the Warrants immediately included simplicity, lower overall costs and complexity, fewer administrative concerns, and less exposure to overall market risk and volatility than the Alternatives that involved holding or exercising any of the Warrants.

17. FCI ultimately determined that Alternative (d), involving selling the Warrants, was in the best interests of the Plans and the affected participants, and protective of the participants' rights. FCI concluded that the benefits of selling the Warrants were immediate, because it involved lower overall costs and complexity, fewer administrative concerns, and less exposure to overall market risk and volatility than the other alternatives. Accordingly, FCI concluded that the sale of the Warrants

[21] ERISA section 410 provides, in part, that ''except as provided in ERISA sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [meaning ERISA section 410(a] shall be void as against public policy.''

was in the best interests of the Plans and their participants and beneficiaries and protective of their rights.

18. FCI sold the Oxy Plan's 1,476,172 Warrants in ''blind transactions'' on the NYSE over the course of five trading dates (August 6, 7, 10, 11, and 12, 2020). Gross proceeds received by the Oxy Plan totaled $6,332,184.28 ($6,332,222.83, including interest) and were fully and proportionately allocated to the Plan accounts of the affected participants in the Oxy Stock Fund. Oxy also paid commissions totaling $14,761.72, and $139.94 for SEC fees.

19. On August 10, 2020, FCI sold the Anadarko Plan's 26,601 Warrants in ''blind transactions'' on the NYSE, realizing a net benefit to the affected Anadarko Plan participants of $115,538.88.[22]

ERISA Analysis

20. The Applicants have requested an administrative exemption from the Department for: (a) the acquisition of the Warrants by the Plans in connection with the distribution; and (b) the holding of the Warrants by the Plans during the holding period. The Applicants represent that the Warrants are not ''qualifying'' employer securities because they are not stock, marketable obligations, or interests in a publicly-traded partnership.

21. ERISA section 407(a)(1)(A) provides that a plan may not acquire or hold any ''employer security'' which is not a ''qualifying employer security.'' Under ERISA section 407(d)(1), ''employer securities'' are defined, in relevant part, as securities issued by an employer of employees covered by the plan, or by an affiliate of the employer. ERISA section 407(d)(5) provides, in relevant part, that ''qualifying employer securities'' are stock or marketable obligations. ERISA section 406(a)(2) prohibits a plan fiduciary from permitting a plan to hold any employer security if he or she knows or should know that holding such security violates ERISA section 407(a).

22. ERISA section 406(a)(1)(E) prohibits a plan fiduciary from causing the plan to engage in a transaction if he or she knows or should know that the transaction constitutes the acquisition, on behalf of the plan, of any employer security in violation of ERISA section 407(a).

[22] Because the Anadarko Plan Oxy Stock Fund is frozen and unable to accept new investments or reinvestments, the Applicants represent that the proceeds from the sale were proportionately credited to the affected participants through the Anadarko Plan's qualified designated investment alternative.

Conditions in This Proposal

23. This proposed exemption contains conditions designed to ensure that covered transactions were in the interest of the Plans, and that the Plans' participants and beneficiaries were sufficiently protected. For example, the proposal requires that Oxy: (1) issued the Warrants to all stockholders of Oxy common stock, including the Plans; and (2) treated all of Oxy common stockholders, including the Plans, the same with respect to the acquisition and holding of the Warrants.

24. Additionally, the proposed exemption requires Oxy to have issued the same proportionate number of Warrants to all Oxy common stockholders, including the Plans, based on the number of shares of Oxy common stock held by each stockholder. Moreover, the Plans' acquisition of the Warrants must have resulted from a unilateral and independent corporate act of Oxy without any participation by the Plans.

25. Further, all decisions regarding whether to hold, sell, or exercise the Warrants by the Plans must have been made by FCI while acting solely in the interests of the Plans and their participants and beneficiaries, and in accordance with the Plan's provisions. The proposal requires that FCI's decision to sell all of the Warrants received by the Plans in blind transactions on the NYSE was protective and in the interests of the Plans and their participants and beneficiaries.

26. FCI must provide a written statement to the Department demonstrating that the covered transactions have met all of the exemption conditions within 90 days after the exemption is granted. The proposal requires that the Plans paid no brokerage fees, commissions, subscription fees, or other charges to Oxy with respect to the acquisition and holding of the Warrants nor to any affiliate of Oxy or FCI with respect to the sale of the Warrants. In addition, no party related to this exemption request has or will, indemnify FCI, in whole or in part, for negligence and/or for any violation of state or federal law that may be attributable to FCI's performance of its duties as an independent fiduciary overseeing the transaction. Further, no contract or instrument may purport to waive FCI's liability under state or federal law for any such violations.

27. The proposal also requires the Plans to provide each participant the entire amount they were due with respect to the acquisition and sale of the Warrants. Finally, all the material facts and representations made by the Applicants and set forth in the Summary of Facts and Representations must be true and accurate.

Statutory Findings

28. Based on the conditions included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicants would satisfy the statutory requirements for an exemption under ERISA section 408(a) for the reasons discussed below.

a. *The Proposed Exemption Is ''Administratively Feasible.''*

The Department has tentatively determined that the proposed exemption is administratively feasible because, among other things, a qualified independent fiduciary, FCI, represented the Plans for all purposes with respect to the acquisition, holding and disposition of the Warrants, and will document its findings in a written report to the Department. The Department notes that, under the terms of this proposed exemption, FCI may not be indemnified, in whole or in part, for an act of negligence by FCI in performing its duties and responsibilities to the Plans.

b. *The Proposed Exemption Is ''In the Interests of the Plans.''* The Department has tentatively determined that the proposed exemption is in the interest of the Plans because the Warrants were automatically issued at no cost to Oxy common stockholders of record as of the Record Date, including the Plans. The proposed exemption would also permit the Plans' holding and disposition of the Warrants, thereby realizing their value, either through the exercise or sale of the Warrants in blind transactions on the open market.

c. *The Proposed Exemption Is ''Protective of the Plans.''* The Department has tentatively determined that the proposed is protective of the plans and their participants and beneficiaries, because the Warrants Offering was approved by the Oxy Board of Directors and all Oxy common stockholders, including the Plans, were treated the same. In addition, all decisions regarding whether to hold, sell, or exercise the Warrants were made by FCI, acting solely in the interests of the Plans' participants and beneficiaries, and in accordance with the Plans' provisions. FCI also had exclusive responsibility for determining whether to hold, exercise, or sell the Warrants, and ultimately concluded that the sales of the Warrants were in the interests of the Plans and their participants. Further, the market for the Warrants was public and listed on the NYSE; therefore, their market value could be readily determined. Finally, the Plans

did not pay any fees or commissions in connection with the acquisition and holding of the Warrants.

Proposed Exemption

Section I. Covered Transactions

If this proposed exemption is granted, the restrictions of ERISA sections 406(a)(1)(E), 406(a)(2) and 407(a)(1)(A), shall not apply to the acquisition and holding by the Plans of Warrants, issued by Oxy, provided the conditions set forth in section II are satisfied.

Section II. Conditions

(a) The Warrants were issued by Oxy to all Oxy common stockholders, including the Plans;

(b) All Oxy common stockholders, including the Plans, were treated in the same manner with respect to the acquisition and holding of the Warrants;

(c) All Oxy common stockholders, including the Plans, were issued the same proportionate number of Warrants based on the number of shares of Oxy common stock held by such stockholder;

(d) The Plans' acquisition of the Warrants was a result of a unilateral and independent corporate act of Oxy without any participation by the Plans;

(e) All decisions regarding whether to hold, sell, or exercise the Warrants by the Plans were made by Fiduciary Counselors Inc. (FCI), a qualified independent fiduciary within the meaning of 29 CFR 2570.31(j) while acting solely in the interests of the Plans and their participants and beneficiaries and in accordance with the Plan's provisions;

(f) FCI determined that it was protective and in the interests of the Plans and their participants and beneficiaries to sell all of the Warrants received by the Plans in blind transactions on the NYSE;

(g) FCI will provide a written statement to the Department demonstrating that the covered transactions have met all of the exemption conditions within 90 days after the exemption is granted;

(h) No brokerage fees, commissions, subscription fees, or other charges were paid by the Plans to Oxy with respect to the acquisition and holding of the Warrants, nor were they paid to any affiliate of Oxy or FCI with respect to the sale of the Warrants;

(i) No party related to this exemption application has or will indemnify FCI, in whole or in part, for negligence and/or any violation of state or federal law that may be attributable to FCI in performing its duties overseeing the transaction. In addition, no contract or instrument may purport to waive FCI's liability under state or federal law for any such violations;

(j) Each Plan participant received the entire amount they were due with respect to the acquisition of the Warrants and the sale of the Warrants; and

(k) All the material facts and representations made by the Applicants that are set forth in the Summary of Facts and Representations are true and accurate.

Effective Date: If granted, the proposed exemption will be effective for the period beginning August 3, 2020, through and including August 12, 2027.

Notice to Interested Persons

Oxy will provide notice (the Notice) of the publication of the proposed exemption in the **Federal Register** by email (where available) and by U.S. first class mail within fifteen (15) days after publication of the proposed exemption in the **Federal Register**. Because Anadarko no longer has its own website due to the Oxy and Anadarko merger, Oxy will post the Notice on the Oxy website beginning on the same date Oxy mails the Notices to interested persons. Each Notice will contain a copy of the proposed exemption, as it appears in the **Federal Register** on the date of publication, and a Supplemental Statement, as required under 29 CFR 2570.43(a)(2), which will advise all interested persons of their right to comment and/or request a hearing with respect to the proposed exemption. All written comments and/or requests for a hearing must be received by the Department from interested persons by March 27, 2023.

All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as a name, address, or other contact information) or confidential business information with your comment that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

For Further Information Contact: Blessed Chuksorji-Keefe of the Department, telephone (202) 693–8567. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC.

George Christopher Cosby,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2023–02703 Filed 2–8–23; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Benefit Appeals Report

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL's) Employment and Training Administration (ETA) is soliciting

comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Benefit Appeals Report.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by April 10, 2023.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Noel Sukhram by telephone (202) 693–3161 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *Sukhram.Noel@dol.gov*.

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Room S–4524, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *Sukhram.Noel@dol.gov* or by Fax 202–693–3975.

FOR FURTHER INFORMATION CONTACT: Contact Noel Sukhram by telephone at (202) 693–3161 (this is not a toll-free number) or by email at *Sukhram.noel@dol.gov.*

Authority: 44 U.S.C. 3506(c)(2)(A).

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The ETA–5130, Benefit Appeals Report, contains information on the number of unemployment insurance appeals and the resultant decisions classified by program, the appeals level, the number of cases filed and disposed of (workflow), and decision results by level, appellant, and issue. The data on this report are used by ETA to monitor the benefit appeals process in the State Workforce Agencies (SWAs) and to develop any needed plans for technical assistance or corrective action. The data are also needed for workload forecasts and to determine administrative funding. If this information were not available, program problems might not be discovered early enough to allow for timely solutions and avoidance of more time consuming and costly corrective action. Section 302(a), Social Security Act (SSA); section 303(a)(1), SSA; and section 303(a)(3), SSA authorize this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0172.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate 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;
- Evaluate 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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 responses).

Agency: DOL–ETA.

Type of Review: Extension Without Change.

Title of Collection: Benefit Appeals Report.

Form: ETA 5130.

OMB Control Number: 1205–0172.

Affected Public: State Workforce Agencies.

Estimated Number of Respondents: 53.

Frequency: Monthly.

Total Estimated Annual Responses: 1,272.

Estimated Average Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 1,272 hours.

Total Estimated Annual Other Cost Burden: $0.

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2023–02760 Filed 2–8–23; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Job Corps Enrollee Allotment Determination

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL or Department) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Job Corps Enrollee Allotment Determination.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by April 10, 2023.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained for free by contacting Hilda Alexander by telephone at 202–693–3843 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *alexander.hilda@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of

Labor, Employment and Training—Job Corps, 200 Constitution Ave. NW, N–4459, Washington, DC 20210; by email: *alexander.hilda@dol.gov;* or by fax: 240–531–6732.

FOR FURTHER INFORMATION CONTACT: Hilda Alexander by telephone at 202–693–3843 (this is not a toll-free number) or by email at alexander.*hilda@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

WIOA authorizes the collection of information from Job Corps applicants to determine eligibility for the Job Corps program. 29 U.S.C. 3194–3195. Applicant and student data is maintained in accordance with the Department's Privacy Act System of Records Notice DOL/GOVT–2 Job Corps Student Records authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0030.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate 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;
- Evaluate 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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 responses).

Agency: DOL–ETA.

Type of Review: Revision.

Title of Collection: Job Corps Enrollee Allotment Determination.

Forms: ETA 658.

OMB Control Number: 1205–0030.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 1,749.

Frequency: Once.

Total Estimated Annual Responses: 1,749.

Estimated Average Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 87 hours.

Total Estimated Annual Other Cost Burden: $0.

Authority: 44 U.S.C. 3506(c)(2)(A).

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2023–02756 Filed 2–8–23; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Job Corps Health Questionnaire

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL or Department) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Job Corps Health Questionnaire.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by April 10, 2023.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained for free by contacting Hilda Alexander by telephone at 202–693–3843 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *alexander.hilda@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training—Job Corps, 200 Constitution Ave NW, N–4459, Washington, DC 20210; by email: *alexander.hilda@dol.gov;* or by fax: 240–531–6732.

FOR FURTHER INFORMATION CONTACT: Hilda Alexander by telephone at 202–693–3843 (this is not a toll-free number) or by email at alexander.*hilda@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

WIOA authorizes the collection of information from Job Corps applicants to determine eligibility for the Job Corps program. 29 U.S.C. 3194–3195. Applicant and student data is maintained in accordance with the Department's Privacy Act System of Records Notice DOL/GOVT–2 Job Corps Student Records authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is

approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0543.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate 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;
- Evaluate 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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 responses).

Agency: DOL–ETA.

Type of Review: Revision.

Title of Collection: Job Corps Health Questionnaire.

Forms: ETA 653.

OMB Control Number: 1205–0033.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 66,630.

Frequency: Once.

Total Estimated Annual Responses: 66,630.

Estimated Average Time per Response: 8 minutes.

Estimated Total Annual Burden Hours: 8,884 hours.

Total Estimated Annual Other Cost Burden: $0.

(Authority: 44 U.S.C. 3506(c)(2)(A))

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2023–02701 Filed 2–8–23; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of H–2A and H–2B Foreign Workers in the United States: Annual Update to Allowable Monetary Charges for Agricultural Workers' Meals and for Travel Subsistence Reimbursement, Including Lodging

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (DOL) is issuing this notice to announce the annual updates to allowable monetary charges employers of H–2A workers, in occupations other than herding or production of livestock on the range, may charge any workers who reside in employer-provided housing when the employer provides three meals per day. This notice also announces the maximum travel subsistence meal reimbursement a worker with receipts may claim under the H–2A and H–2B programs. Finally, this notice includes a reminder regarding employers' obligations with respect to overnight lodging costs as part of required subsistence.

DATES: These allowable charges become effective February 9, 2023.

FOR FURTHER INFORMATION CONTACT: Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5311, Washington, DC 20210, telephone (202) 693–8200 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY/TDD by calling the toll-free Federal Information Relay Service at 1 (877) 889–5627.

SUPPLEMENTARY INFORMATION: The U.S. Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer's petition for the admission of H–2A or H–2B nonimmigrant temporary workers in the U.S. unless the petitioner has received an H–2A or H–2B labor certification from DOL. The labor certification provides that: (1) there are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. *See* 8 U.S.C. 1101(a)(15)(H)(ii)(a) and (b), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5) and (6); 20 CFR 655.1(a) and 655.100.

Allowable Meal Charge

H–2A agricultural employers who are employing workers in occupations other than herding or production of livestock on the range must offer and provide each worker who resides in employer-provided housing three meals per day or free and convenient cooking facilities.[1] *See* 20 CFR 655.122(g). Where the employer provides the meals, the job offer must state the charge, if any, to the worker for such meals. *See id.* The amount of meal charges is governed by 20 CFR 655.173.

By regulation, DOL has established the methodology for determining the maximum amount that H–2A agricultural employers may charge workers for providing them with three meals per day. *See* 20 CFR 655.173(a). This methodology allows for annual adjustments of the previous year's maximum allowable charge based on the updated Consumer Price Index for All Urban Consumers for Food (CPI–U for Food), not seasonally adjusted. *See id.* The maximum amount employers may charge workers for providing meals is adjusted annually by the 12-month percentage change in the CPI–U for Food for the prior year (*i.e.,* between December of the year just concluded and December of the prior year). *See id.* The Office of Foreign Labor Certification (OFLC) Certifying Officer may also permit an employer to charge workers a higher amount for providing them with three meals a day if the higher amount is justified and sufficiently documented by the employer, as set forth in 20 CFR 655.173(b).

The percentage change in the CPI–U for Food between December 2021 and

[1] H–2A employers must provide workers engaged in herding or the production of livestock on the range meals or food to prepare meals without charge or deposit charge. *See* 20 CFR 655.210(e).

December 2022 was 10.4 percent.[2] Thus, the annual update to the H–2A allowable meal charge is calculated by multiplying the current allowable meal charge ($14.00) by the 12-month percentage change in the CPI–U for Food between December 2021 and December 2022 ($14.00 × 1.104 = $15.46).[3] Accordingly, the updated maximum allowable charge under 20 CFR 655.122(g) and 655.173 is $15.46 per day, and an employer is not permitted to charge a worker more than $15.46 per day unless the OFLC Certifying Officer approves a higher charge, as authorized under 20 CFR 655.173(b).

Reimbursement for Travel-Related Subsistence

H–2B and H–2A employers must pay reasonable travel and subsistence costs, including the costs of meals and lodging, incurred by workers during travel to the worksite from the place from which the worker has come to work for the employer and from the place of employment to the place from which the worker departed to work for the employer, as well as any such costs incurred by the worker incident to obtaining a visa authorizing entry to the United States for the purpose of H–2A or H–2B employment. *See* 20 CFR 655.122(h)(1) and (2) and 655.20(j)(1)(i) and (ii).

Specifically, an H–2A employer is responsible for providing, paying in advance, or reimbursing a worker for the reasonable costs incurred by the worker for transportation and daily travel-related subsistence from the place from which the worker has come to work for the employer, if the worker completes 50 percent of the work contract period. 20 CFR 655.122(h)(1). In general, the employer must provide (or pay at the time of departure) the worker's transportation and daily travel-related subsistence from the place of employment to the place from which the worker departed to work for the employer upon the worker completing the contract or being terminated without cause. 20 CFR 655.122(h)(2).

Similarly, an H–2B employer is responsible for providing, paying in advance, or reimbursing a worker for transportation and daily travel-related subsistence from the place from which the worker has come to work for the employer, if the worker completes 50 percent of the job order period. 20 CFR 655.20(j)(1)(i). Upon the worker completing the job order period or being dismissed early (for any reason), the employer is generally responsible for providing (or paying at the time of departure) the worker's cost of return transportation and daily travel-related subsistence from the place of employment to the place from which the worker departed to work for the employer. 20 CFR 655.20(j)(1)(ii).

The amount of the daily subsistence must be at least the amount permitted in 20 CFR 655.173(a) (or the higher amount approved under 20 CFR 655.173(b), if any). The maximum daily amount an employer is required to reimburse workers for travel-related lodging and subsistence, as evidenced with receipts, is equal to the standard Continental United States (CONUS) per diem rate, as established by the General Services Administration (GSA) at 41 CFR part 301, formerly published in Appendix A and now found at *https://www.gsa.gov/travel/plan-book/per-diem-rates*. See Maximum Per Diem Reimbursement Rates for the Continental United States, 87 FR 50861 (Aug. 18, 2022). The standard CONUS meals and incidental expenses rate is $59.00 per day for 2023.[4] Workers who qualify for travel reimbursement are entitled to reimbursement for meals up to the standard CONUS meals and incidental expenses rate when they provide receipts. In determining the appropriate amount of reimbursement for meals for less than a full day, the employer may limit the meal expense reimbursement, with receipts, to 75 percent of the maximum reimbursement for meals, or $44.25, based on the GSA per diem schedule. *Id.* If a worker does not provide receipts, the employer is not obligated to reimburse above the minimum stated at 20 CFR 655.173, as specified above.

If transportation and lodging are not provided by the employer, the amount an employer must pay for transportation and, where required, lodging must be no less than (and is not required to be more than) the most economical and reasonable costs. The employer is responsible for those costs necessary for the worker to travel to the worksite if the worker completes 50 percent of the work contract period but is not responsible for unauthorized detours. The employer also is responsible for the costs of return transportation and subsistence, including lodging costs where necessary, as described above. These requirements apply equally to instances where the worker is traveling within the U.S. or internationally to the employer's worksite. *See* 20 CFR 655.122(h)(1) and (2) and 655.20(j)(1)(i) and (ii).

For further information on when the employer is responsible for lodging costs, please see the DOL's H–2A Frequently Asked Questions on Travel and Daily Subsistence, and H–2B Frequently Asked Question on Job Offers and Employer Obligations, on OFLC's website at *https://www.dol.gov/agencies/eta/foreign-labor.*

Authority: 20 CFR 655.173.

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2023–02755 Filed 2–8–23; 8:45 am]

BILLING CODE 4510–FP–P

[2] *See* Consumer Price Index—December 2022, published January 12, 2023, at *https://www.bls.gov/news.release/archives/cpi_01122023.pdf.*

[3] In 2022, the maximum allowable charge under 20 CFR 655.122(g) and 655.173 was $14.00 per day. *See* 87 FR 10246 (Feb. 23, 2022).

[4] *See id.*

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Student Experiences Assessment (SEA) of Job Corps Centers

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL or Department) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Student Experiences Assessment (SEA) of Job Corps Centers.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by April 10, 2023.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained for free by contacting Hilda Alexander by telephone at 202–693–3843 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *alexander.hilda@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training—Job Corps, 200 Constitution Ave NW, N–4459, Washington, DC 20210; by email: *alexander.hilda@dol.gov;* or by fax: 240–531–6732.

FOR FURTHER INFORMATION CONTACT: Hilda Alexander by telephone at 202–693–3843 (this is not a toll-free number) or by email at *alexander.hilda@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

WIOA authorizes the collection of information from Job Corps applicants to determine eligibility for the Job Corps program. 29 U.S.C. 3194–3195. Applicant and student data is maintained in accordance with the Department's Privacy Act System of Records Notice DOL/GOVT–2 Job Corps Student Records authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0543.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate 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;
- Evaluate 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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 responses).

Agency: DOL–ETA.

Type of Review: Revision.

Title of Collection: Student Experiences Assessment (SEA) of Job Corps Centers.

Forms: N/A.

OMB Control Number: 1205–0543.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 149,668.

Frequency: Once.

Total Estimated Annual Responses: 149,668.

Estimated Average Time per Response: .33.

Estimated Total Annual Burden Hours: 49,390 hours.

Total Estimated Annual Other Cost Burden: $0.

(Authority: 44 U.S.C. 3506(c)(2)(A))

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2023–02702 Filed 2–8–23; 8:45 am]

BILLING CODE 4510–FT–P

OFFICE OF MANAGEMENT AND BUDGET

OMB Request for Information (RFI)

AGENCY: Office of Management and Budget (OMB), Executive Office of the President.

ACTION: Notice of request for information (RFI).

SUMMARY: The Office of Management and Budget (OMB) will be proposing revisions to title 2 of the Code of Federal Regulation (CFR), subtitle A, chapters I and II, in 2023. This RFI will support this effort by soliciting feedback from the general public on 2 CFR, which will be considered during the process of drafting updates. OMB anticipates publishing the final update to 2 CFR by December 2023. The first update was published on August 13, 2020.

DATES: Interested persons and organizations are invited to submit comments on or before March 13, 2023.

ADDRESSES: You should submit comments via the Federal eRulemaking Portal at *https://www.regulations.gov/.* Follow the instructions for submitting comments. All public comments received are subject to the Freedom of Information Act and will be posted in their entirety at *https://www.regulations.gov/,* including any personal and business confidential information provided. Do not include any information you would not like to be made publicly available.

Instructions: Response to this RFI is voluntary. Respondents may answer as many or as few questions as they wish. Each individual or institution is requested to submit only one response. Electronic responses must be provided as attachments to an email rather than a link. Please identify your answers by responding to a specific question or topic if possible. Comments consisting of no more than seven pages or 2,500 words are requested; longer responses may not be considered. Responses should include the name of the person(s) or organization(s) filing the response. Responses containing references, studies, research, and other empirical data that are not widely published should include copies of or electronic links to the referenced materials. Please do not submit copyrighted material. Responses containing profanity, vulgarity, threats, or other inappropriate language or content will not be considered. This RFI is not accepting applications for financial assistance or employment opportunities.

Any information obtained from this RFI is intended to be used by the Government on a non-attribution basis for drafting updated guidance for Federal financial assistance. OMB will not respond to individual submissions. A response to this RFI will not be viewed as a binding commitment to accept any proposals put forward.

FOR FURTHER INFORMATION CONTACT: Steven Mackey, Policy Analyst at the OMB Office of Federal Financial Management at *MBX.OMB.OFFM.Grants@OMB.eop.gov.*

SUPPLEMENTARY INFORMATION:

2 CFR, subtitle A, consists of two main chapters of OMB guidance: chapter 1 and chapter 2. Chapter I contains parts 25, 170, 175, 176, 180, 182, and 183; and chapter 2 contains

part 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Certain parts of Chapter 1 reflect statutory requirements with limited additional guidance and will not be updated. The following are examples of parts in Subtitle A that may be under consideration for the next revision:

- *Part 25:* Universal Identifier and Systems for Award Managements
- *Part 170:* Reporting Subaward and Executive Compensation Information
- *Part 200:* Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

In this notice, OMB is providing an opportunity for members of the public to provide comments on 2 CFR. Feedback provided should support the following goals of OMB's forthcoming revision:

(1) revise guidance to incorporate statutory requirements and administration priorities;

(2) revise guidance to reduce agency and recipient burden;

(3) clarify guidance by addressing sections that recipients or agencies have interpreted in different ways; and

(4) clarify guidance by rewriting applicable sections in plain English, improving flow, and addressing inconsistent use of terms. The revision will not represent a complete revision or restructuring of 2 CFR. OMB will strive to maintain the same overall structure of 2 CFR, including section numbers.

OMB seeks responses to one, some, or all of the following questions. Please note the current version of 2 CRF is located at *https://www.ecfr/current/title-2*. Where possible, include specific examples of how you or your organization is or would be impacted negatively or positively by specific sections of 2 CFR and, if applicable, provide references to any reports, articles, or other source material supporting your position. If you believe the current language should be revised, suggest an alternative (which may include not providing guidance at all) and include an explanation, analysis, or both, of how the alternative might meet the same objective or be more effective. Comments on the economic effects including quantitative and qualitative data are especially helpful.

1. What specific section(s) of 2 CFR would benefit from revision in order to support the goal of reducing administrative burden?

2. What specific section(s) of 2 CFR have been interpreted differently by Federal agencies and recipients leading to inconsistent implementation of Federal financial assistance?

3. What specific section(s) of 2 CFR would benefit from improved clarity or more precise language?

4. What specific suggestions do you have for otherwise improving the language of 2 CFR (*e.g.,* consistent use of terms, other suggested edits)?

Authority: 31 U.S.C. 503; Pub. L. 109–282; Pub. L. 113–101.

Deidre A. Harrison,

Acting Controller, Office of Federal Financial Management.

[FR Doc. 2023–02158 Filed 2–8–23; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 23–006]

National Space Council (NSpC) Users' Advisory Group (UAG); Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), as amended, NASA announces a meeting of the NSpC UAG. This will be the first meeting of the recently announced UAG membership

DATES: Thursday, February 23, 2023, from 9:00 a.m.-2:00 p.m., Eastern Time. Meeting may adjourn earlier as needed at the discretion of the Chair.

ADDRESSES: JW Marriott Hotel, 1331 Pennsylvania Avenue NW, Washington, DC 20004.

Virtual Access via internet and Phone: Access information links for both virtual video and audio lines will be posted in advance at the following UAG website: *https://www.nasa.gov/content/national-space-council-users-advisory-group*.

FOR FURTHER INFORMATION CONTACT: Mr. James Joseph Miller, UAG Designated Federal Officer and Executive Secretary, Space Operations Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 262–0929 or *jj.miller@nasa.gov.*

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the capacity of the meeting room. For security purposes, pre-registration, or door sign-in with identification will be required to attend this event in person. For virtual or telephonic access, specific information will be posted in advance at the website as listed above.

The agenda for the meeting will include the following:

- Opening Remarks and Introductions by UAG Chair, General Lester Lyles (USAF, Ret.), and Deputy Assistant to the President and Executive Secretary of the NSpC, Mr. Chirag Parikh
- Expert ''Space Enterprise'' Presentations based on UAG Subcommittee Focus Areas
- High-Level Workplan from UAG Subcommittee Chairs:
  - —Exploration and Discovery
  - —Economic Development/Industrial Base
  - —Climate and Societal Benefits
  - —Data and Emerging Technology
  - —STEM Education, Diversity & Inclusion and Outreach
  - —National Security
- Roundtable Discussion
- Next Steps, Action Plan, and Schedule

Summary: In-person attendees will be requested to show identification and sign a register prior to entrance to the proceedings. Advance RSVPs through the UAG website noted above will expedite entry.

For further information about membership and a detailed Agenda, visit the UAG website at: *https://www.nasa.gov/content/national-space-council-users-advisory-group.*

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2023–02741 Filed 2–8–23; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445–LR; 50–446–LR]

In the Matter of Vistra Operations Company, LLC (Comanche Peak Nuclear Power Plant, Units 1 and 2); Order

The Nuclear Regulatory Commission (NRC) has before it an application filed by Vistra Operations Company, LLC, to renew its licenses for Comanche Peak Nuclear Power Plant, Units 1 and 2. By **Federal Register** notice dated December 1, 2022, the NRC provided an opportunity to request a hearing and petition for leave to intervene with respect to the license renewal application.[1] The notice stated that requests for a hearing must be filed by January 30, 2023.

Ms. Karen Hadden, on behalf of SEED Coalition, requested a ninety-day extension to the January 30, 2023, deadline for all members of the public

[1] Vistra Operations Co., LLC; Comanche Peak Nuclear Power Plant, Units 1 and 2, 87 FR 73,798 (Dec. 1, 2022) (Hearing Notice).

to request a hearing and petition to intervene.[2] In addition, Ms. Hadden raised several concerns regarding the conduct of the NRC Staff's public meeting held in January 2023. Given the barriers to participation during the public meeting articulated by the requestor, I refer these concerns, as well as associated requests to extend the environmental scoping comment period, to the NRC Staff for its review and response, consistent with my earlier order in this matter.[3]

Pursuant to the authority delegated to me by the Commission on February 3, 2023, I extend the deadline for all persons to file a hearing request until March 1, 2023. Petitions to intervene and requests for hearing should be filed consistent with the Supplementary Information section of the Hearing Notice.[4]

It is so ordered.

For the Commission.

Dated at Rockville, Maryland, this 6th day of February 2023.

Brooke P. Clark,

Secretary of the Commission.

[FR Doc. 2023–02784 Filed 2–8–23; 8:45 am]

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[2] Email from Karen Hadden to Hearing Docket, NRC (Jan. 30, 2023).

[3] Order (Granting Requests for Extension of Time) (Jan. 30, 2023) (unpublished) (referring similar concerns to the NRC Staff).

[4] *See* Hearing Notice, 87 FR at 73,799–73,800 (Dec. 1, 2022).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96802; File No. SR–MEMX–2023–03]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule

February 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 January 31, 2023, 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.

[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 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 February 1, 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: (i) adopt new pricing for executions of orders subject to the Exchange's Display-Price Sliding[4] that add liquidity to the Exchange and receive price improvement over the order's ranked price when executed; (ii) adopt a new tier under the Liquidity Provision Tiers; and (iii) modify the required criteria under the Sub-Dollar Rebate Tier.

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 15% of the total market share of executed volume of equities trading.[5] 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.[6] 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.

Orders Subject to Display-Price Sliding

The Exchange currently provides a base 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 provides a base rebate of 0.075% of the total dollar value of the transaction for executions of orders in securities priced below $1.00 per share that add displayed liquidity to the Exchange (such orders, ''Added Displayed Sub-Dollar Volume'').

The Exchange is now proposing to adopt new pricing for executions of orders subject to Display-Price Sliding that add liquidity to the Exchange and receive price improvement over the order's ranked price when executed (such orders ''Added Price-Improved Volume''). Specifically, the Exchange proposes to provide a base rebate of $0.0015 per share for executions of Added Price-Improved Volume in securities priced at or above $1.00 per share, and the Exchange proposes to provide free executions of Added Price-Improved Volume in securities priced below $1.00 per share.[7] Thus, the

[3] *See* Exchange Rule 1.5(p).

[4] *See* Exchange Rule 11.6(j)(1)(A).

[5] Market share percentage calculated as of January 30, 2023. The Exchange receives and processes data made available through consolidated data feeds (*i.e.,* CTS and UTDF).

[6] *Id.*

[7] The proposed pricing for executions of Added Price-Improved Volume is referred to by the

proposed changes would reduce the base rebates provided for executions of Added Price-Improved Volume. Additionally, as proposed, such orders would be subject to the Exchange's Non-Display Add Tiers such that a Member that qualifies for a Non-Display Add Tier would receive the rebates provided under such tier that are applicable to executions of orders that add non-displayed liquidity to the Exchange with respect to its executions of Added Price-Improved Volume.[8]

Pursuant to the Exchange's Display-Price Sliding functionality, an order that would lock or cross a protected quotation is ranked on the Exchange's order book at the locking price and displayed at one minimum price variation less aggressive than the locking price.[9] For bids, this means that a price slid order is displayed at one minimum price variation less than the current national best offer, and for offers, this means that a price slid order is displayed at one minimum price variation more than the current national best bid. Additionally, Exchange Rule 11.10(a)(4)(D) allows an order subject to the Display-Price Sliding process that is not executable at its most aggressive price to be executed at one-half minimum price variation less aggressive than the price at which it is ranked. Specifically, in the event an order submitted to the Exchange on the side opposite such a price slid order is a market order or a limit order priced more aggressively than an order displayed on the Exchange's order book (*i.e.,* the incoming order is priced more aggressive than the locking price), the Exchange will execute the incoming order at, in the case of an incoming sell order, one-half minimum price variation less than the price of the displayed order, and, in the case of an incoming buy order, at one-half minimum price variation more than the price of the displayed order.

Based on this functionality, orders executed as described above will receive price improvement over the price at which such orders are ranked. Because price slid orders subject to the order handling process described above will receive price improvement, the Exchange is proposing to provide a lower rebate than the current applicable base rebate for such executions (*i.e.,* $0.0015 per share for executions of Added Price-Improved Volume in securities priced at or above $1.00 per share rather than the base rebate of $0.0020 per share that such executions receive today, and free executions of Added Price-Improved Volume in securities priced below $1.00 per share rather than the base rebate of 0.075% of the total dollar value of the transaction that such executions receive today). The proposed changes are for business and competitive reasons, as the Exchange believes that such reductions in rebates would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity, and Exchange believes that the proposed lower base rebates for such executions are appropriate because such executions also receive price improvement, which offsets (at least in part) the reduction in the applicable rebate, as described above. Further, the Exchange notes that other maker-taker equity exchanges also provide lower rebates (such as free executions) for executions of orders subject to similar price sliding functionality that add liquidity and receive price improvement when executed than for executions of other orders that add liquidity due to the fact that the price slid orders receive price improvement.[10]

The Exchange is also proposing to amend the definitions of Displayed ADAV[11] and Non-Displayed ADAV[12] on the Fee Schedule to state that orders subject to Display-Price Sliding that receive price improvement when executed (*i.e.,* Added Price-Improved Volume) are included in both calculations, which are used by the Exchange for volume tier purposes.

New Liquidity Provision Tier

As noted above, the Exchange currently provides a base 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 (*i.e.,* Added Displayed Volume). The Exchange also currently offers Liquidity Provision Tiers 1–5 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 adopt a new tier under the Liquidity Provision Tiers, which, as proposed, would be the new Liquidity Provision Tier 2, and the existing Liquidity Provision Tiers 2–5 would be renumbered as Liquidity Provision Tiers 3–6 (hereinafter referred to as such). The rebates and required criteria under Liquidity Provision Tiers 1, 3, 4, 5 and 6 would remain unchanged.

Under the proposed new Liquidity Provision Tier 2, the Exchange would provide an enhanced rebate of $0.0033 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.25% of the TCV;[13] and (2) a Non-Displayed ADAV that is equal to or greater than 5,000,000 shares.[14] The

Exchange on the Fee Schedule under the new description ''Added volume, order subject to Display-Price Sliding that receives price improvement when executed'' and such orders will receive a Fee Code of ''P'' assigned by the Exchange. The Exchange notes that it will append a second character, either ''A'' or ''B'' to indicate whether the execution occurred in a security priced at or above $1.00 per share or below $1.00 per share, which is consistent with the Fee Code format used by the Exchange today.

[8] Executions of Added Price-Improved Volume for Members that qualify for the Non-Display Add Tiers will receive a Fee Code of ''P1'', ''P2'' or ''P3'', as applicable, for such executions on the monthly invoices provided to Members.

[9] *See* Exchange Rule 11.6(j)(1)(A).

[10] *See* the Cboe BZX equities trading fee schedule on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*), which provides for free executions of any displayed order subject to price sliding that receives price improvement; the Cboe EDGX equities trading fee schedule on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/edgx/*), which provides for free executions of any displayed order subject to price sliding that receives price improvement. *See also* Securities Exchange Act Release No. 65407 (September 27, 2011), 76 FR 61127 (October 3, 2011) (SR–BATS–2011–037) (notice of filing and immediate effectiveness of fee changes adopted by BATS, including the discontinuation of a liquidity rebate for any order subject to price sliding that adds liquidity and receives price improvement over its ranked price when executed).

[11] As set forth on the Fee Schedule, ''Displayed ADAV'' currently means ADAV with respect to displayed orders, and ''ADAV'' means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis. As proposed, ''Displayed ADAV'' would mean ADAV with respect to displayed orders (including orders subject to Display-Price Sliding that receive price improvement when executed).

[12] As set forth on the Fee Schedule, ''Non-Displayed ADAV'' currently means ADAV with respect to non-displayed orders (including Midpoint Peg orders). As proposed, ''Non-Displayed ADAV'' would mean ADAV with respect to non-displayed orders (including orders subject to Display-Price Sliding that receive price improvement when executed and Midpoint Peg orders).

[13] 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.

[14] The proposed pricing for new Liquidity Provision Tier 2 is referred to by the Exchange on the Fee Schedule under the description ''Added displayed volume, Liquidity Provision Tier 2'' with

Continued

Exchange proposes to provide Members that qualify for the proposed new Liquidity Provision Tier 2 a rebate of 0.075% of the total dollar volume of the transaction for executions of orders in securities priced below $1.00 per share that add displayed liquidity to the Exchange, which is the same rebate that is applicable to such executions under each of the existing Liquidity Provision Tiers. The proposed new Liquidity Provision Tier 2 is designed to encourage Members to maintain or increase their order flow that adds liquidity, including in the form of non-displayed orders, to the Exchange in order to qualify for the proposed enhanced rebate for executions of Added Displayed Volume, which, in turn, would encourage the submission of additional displayed orders, thereby promoting price discovery and contributing to a deeper and more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

Sub-Dollar Rebate Tier

As noted above, the Exchange currently provides a base rebate of 0.075% of the total dollar value of the transaction for executions of orders in securities priced below $1.00 per share that add displayed liquidity to the Exchange (*i.e.,* Added Displayed Sub-Dollar Volume). The Exchange also currently offers the Sub-Dollar Rebate Tier under which the Exchange provides an enhanced rebate of 0.15% of the total dollar value of the transaction for executions of Added Displayed Sub-Dollar Volume for Members that qualify for such tier by achieving an ADAV that is equal to or greater than 0.15% of the TCV. Now, the Exchange proposes to modify the required criteria under the Sub-Dollar Rebate Tier such that a Member would now qualify for such tier by achieving one of the following two alternative criteria: (1) an ADAV that is equal to or greater than 0.15% of the TCV; or (2) a Sub-Dollar ADAV [15] that is equal to or greater than 5,000,000 shares. Thus, such proposed change would keep the existing ADAV threshold intact and also provide an alternative volume threshold that a Member may choose to achieve in order to qualify for the Sub-Dollar Rebate Tier that is based on the Member's Sub-Dollar ADAV, which is designed to encourage Members to maintain or increase their orders in securities priced below $1.00 per share that add liquidity to the Exchange. The Exchange is not proposing to modify the pricing associated with the Sub-Dollar Rebate Tier.

The Exchange believes that the Sub-Dollar Rebate Tier, as modified, would encourage the submission of orders in securities priced below $1.00 per share that add liquidity to the Exchange, as it provides an alternative threshold based on Sub-Dollar ADAV that Members may choose to achieve, thereby contributing to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants. The Exchange notes that the Sub-Dollar Rebate Tier, as modified, would continue to be available to all Members and, while the Exchange has no way of predicting with certainty how the proposed new criteria will impact Member activity, the Exchange expects that more Members will qualify, or strive to qualify, for such tier than currently do under the proposed new criteria, as it is more expansive and provides an alternative threshold that Members may choose to achieve.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[16] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[17] 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.'' [18]

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.

With respect to the proposed pricing changes related to Added Price-Improved Volume, the Exchange believes that providing a lower base rebate for executions of such orders in securities priced at or above $1.00 per share and free executions for such orders in securities priced below $1.00 per share is reasonable, equitable, and not unfairly discriminatory because, as described above, the reduction in rebates would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity, the price improvement received by such executions offsets (at least in part) the change in the rebate structure for such orders, and the pricing structure will apply uniformly to all Members. Additionally, as noted above, the proposed pricing structure for executions of Added Price-Improved Volume is comparable to the pricing structures of other maker-taker equity exchanges, which also provide lower

a Fee Code of ''B2'', ''D2'' or ''J2'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members. The Exchange notes that because the determination of whether a Member qualifies for a certain pricing tier for a particular month will not be made until after the month-end, the Exchange will provide the Fee Codes otherwise applicable to such transactions on the execution reports provided to Members during the month and will only designate the Fee Codes applicable to the achieved pricing tier on the monthly invoices, which are provided after such determination has been made, as the Exchange does for its tier-based pricing today.

[15] As proposed, the term ''Sub-Dollar ADAV'' means ADAV with respect to orders in securities priced below $1.00 per share. The Exchange proposes to add the definition of Sub-Dollar ADAV under the ''Definitions'' section of the Fee Schedule.

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(4) and (5).

[18] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

rebates (such as free executions) for executions of Added Price-Improved Volume than for executions of other orders that add liquidity due to the fact that the price slid orders receive price improvement.[19] Therefore, this aspect of the proposal does not raise any new or novel issues that have not previously been considered by the Commission. Additionally, the Exchange believes that including executions of Added Price-Improved Volume in the executions that receive enhanced rebates for Members that qualify for a Non-Display Add Tier is reasonable, equitable, and not unfairly discriminatory because such orders are executed at a price that is not displayed (*i.e.,* one-half minimum price variation less aggressive than the locking price), and therefore such orders are comparable to other non-displayed orders that receive enhanced rebates under such tiers, this pricing structure would apply uniformly to all Members, and the opportunity to qualify for the Non-Display Add Tiers is available to all Members.

The Exchange also believes the proposal to amend the definitions of Displayed ADAV and Non-Displayed ADAV on the Fee Schedule to state that orders subject to Display-Price Sliding that receive price improvement when executed (*i.e.,* Added Price-Improved Volume) are included in both calculations, which are used for volume tier purposes, is reasonable, equitable, and not unfairly discriminatory in that such calculations will be made accordingly and in a uniform manner by the Exchange with respect to all Members. In addition, the Exchange believes that the proposed approach is reasonable and equitable because orders subject to Display-Price Sliding are, in fact, displayed on the Exchange and thus contribute to price discovery and other benefits to the Exchange and the market generally, but also can be executed at prices not displayed on the Exchange, as described above.

With respect to the proposed new Liquidity Provision Tier 2, the Exchange notes that volume-based incentives and discounts (such as tiers) 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 the proposed new Liquidity Provision Tier 2 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, as described above, is designed to encourage Members to maintain or increase their order flow, including in the form of non-displayed orders, to the Exchange in order to qualify for the corresponding enhanced rebate for executions of Added Displayed Volume, thereby promoting price discovery and contributing to a deeper and more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange believes that the Sub-Dollar Rebate Tier, as modified by the proposed change to the required criteria under such tier, is reasonable, equitable and not unfairly discriminatory for the reasons described above with respect to volume-based tiers, particularly as the Exchange believes the enhanced rebate for executions of Added Displayed Sub-Dollar Volume under such tier remains commensurate with the corresponding required criteria under the applicable tier and reasonably related to the market quality benefits that such tier is designed to achieve. Additionally, the Exchange believes the proposed change to the required criteria under the Sub-Dollar Rebate Tier is reasonable because, as noted above, such change would keep the existing ADAV threshold intact and also provide an alternative criteria that a Member may choose to achieve that is based on a Sub-Dollar ADAV threshold, which would incentivize the submission of additional orders in securities priced below $1.00 per share to the Exchange, thereby contributing to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants. The Exchange also believes the proposed new criteria is equitable and not unfairly discriminatory because all Members will continue to be eligible to meet such criteria, including the Members that currently meet the existing ADAV threshold that is not changing. Further, as noted above, while the Exchange has no way of predicting with certainty how the proposed new criteria will impact Member activity, the Exchange expects that more Members will qualify, or strive to qualify, for such tier under the proposed new criteria, which is more expansive.

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[20] 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. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

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, including in the form of non-displayed orders and orders in securities priced below $1.00 per share, to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members. 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."[21]

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow, including in the form of non-displayed orders and orders in securities priced below $1.00 per share, to the Exchange, thereby enhancing liquidity and market quality 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

[19] *See supra* note 10.

[20] 15 U.S.C. 78f(b)(4) and (5).

[21] *See supra* note 18.

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 Exchange does not believe that the proposed changes to the pricing for executions of Added Price-Improved Volume would impose any burden on intramarket competition because such changes will apply to all Members uniformly, in that the proposed based rebates for such executions would be the base rebates applicable to all Members, and the opportunity to qualify for the Non-Display Add Tiers, and thus receive an enhanced rebate for executions of Added Price-Improved Volume along with other non-displayed orders in securities priced at or above $1.00 per share that add liquidity to the Exchange, is available to all Members. The Exchange does not believe its proposal to amend the definitions of Displayed ADAV and Non-Displayed ADAV on the Fee Schedule to state that orders subject to Display-Price Sliding that receive price improvement when executed (*i.e.,* Added Price-Improved Volume) are included in both calculations, which are used for volume tier purposes, would impose any burden intramarket competition, as such calculations will be made in a uniform manner by the Exchange with respect to all Members. The opportunity to qualify for the proposed new Liquidity Provision Tier 2 and the proposed new criteria under the Sub-Dollar Rebate, and thus receive the corresponding enhanced rebates for executions of Added Displayed Volume and Added Displayed Sub-Dollar Volume, respectively, would be available to all Members that meet the associated volume requirements in any month. As described above, the Exchange believes that the required criteria under each such tier are commensurate with the corresponding rebate under such tier and are 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 15% 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, Added Displayed Sub-Dollar Volume and Added Price-Improved 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 changes represent a competitive proposal through which the Exchange is seeking to decrease the Exchange's expenditures with respect to its transaction pricing through lower base rebates for executions of Added Price-Improved Volume and encourage additional, diverse types of order flow to the Exchange through volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Additionally, as discussed above, the proposed pricing structure for executions of Added Price-Improved Volume is comparable to that of other maker-taker equity exchanges, which also provide lower rebates (such as free executions) for such executions than for executions of other orders that add liquidity due to the fact that the price slid orders receive price improvement.[22] 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 structures and incentives to market participants.

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.'' [23] 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'. . . .''.[24] 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.

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 [25] and Rule 19b–4(f)(2) [26] 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

[22] *See supra* note 10.

[23] *See supra* note 18.

[24] *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)).

[25] 15 U.S.C. 78s(b)(3)(A)(ii).

[26] 17 CFR 240.19b–4(f)(2).

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–2023–03 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–2023–03. 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 Number SR–MEMX–2023–03 and should be submitted on or before March 2, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–02712 Filed 2–8–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96803; File No. SR–NYSE–2023–10]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Expiration Date of the Temporary Amendments to Rules 9261 and 9830

February 3, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 30, 2023, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 extending the expiration date of the temporary amendments to Rules 9261 and 9830 as set forth in SR–NYSE–2020–76 from January 31, 2023 to April 30, 2023, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change would not make any changes to the text of NYSE Rules 9261 and 9830. The proposed rule change is available on the Exchange's website at *www.nyse.com,* 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 self-regulatory organization 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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes extending the expiration date of the temporary amendments as set forth in SR–NYSE–2020–76 [4] to Rules 9261 (Evidence and Procedure in Hearing) and 9830 (Hearing) from January 31, 2023 to April 30, 2023 to harmonize with recent changes by FINRA to extend the expiration date of the temporary amendments to its Rules 9261 and 9830. SR–NYSE–2020–76 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by the current COVID–19 public health risks posed by in-person hearings. The proposed rule change would not make any changes to the text of Exchange Rules 9261 and 9830.[5]

Background

In 2013, the NYSE adopted disciplinary rules that are, with certain exceptions, substantially the same as the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.[6] The NYSE disciplinary rules were implemented on July 1, 2013.[7]

In adopting disciplinary rules modeled on FINRA's rules, the NYSE adopted the hearing and evidentiary processes set forth in Rule 9261 and in

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[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 90024 (September 28, 2020), 85 FR 62353 (October 2, 2020) (SR–NYSE–2020–76) (''SR–NYSE–2020–76'').

[5] The Exchange may submit a separate rule filing to extend the expiration date of the proposed extension beyond April 30, 2023 if the Exchange requires additional temporary relief from the rule requirements identified in NYSE–SR–2020–76. The amended NYSE rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

[6] *See* Securities Exchange Act Release No. 68678 (January 16, 2013), 78 FR 5213 (January 24, 2013) (SR–NYSE–2013–02) (''2013 Notice''), 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR–NYSE–2013–02) (''2013 Approval Order''), and 69963 (July 10, 2013), 78 FR 42573 (July 16, 2013) (SR–NYSE–2013–49).

[7] *See* NYSE Information Memorandum 13–8 (May 24, 2013).

Rule 9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 9800 Series. As adopted, the text of Rule 9261 is identical to the counterpart FINRA rule. Rule 9830 is substantially the same as FINRA's rule, except for conforming and technical amendments.[8]

In response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities, on August 31, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness, SR–FINRA–2020–027, which allowed FINRA's Office of Hearing Officers (''OHO'') to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. Among the rules FINRA amended were Rules 9261 and 9830.[9]

Given that FINRA and OHO administers disciplinary hearings on the Exchange's behalf, and that the public health concerns addressed by FINRA's amendments apply equally to Exchange disciplinary hearings, on September 15, 2020, the Exchange filed to temporarily amend Rule 9261 and Rule 9830 to permit FINRA to conduct virtual hearings on its behalf.[10] In December 2020, FINRA filed a proposed rule change, SR–FINRA–2020–042, to extend the expiration date of the temporary amendments in SR–FINRA–2020–027 from December 31, 2020, to April 30, 2021.[11] On December 22, 2020, the Exchange similarly filed to extend the temporary amendments to Rule 9261 and Rule 9830 to April 30, 2021.[12] On April 1, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–006, to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from April 30, 2021, to August 31, 2021.[13] On April 20, 2021, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to August 31, 2021.[14] On August 13, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–019, to extend the expiration date of the temporary amendments to, among other rules, FINRA Rule 9261 and 9830 from August 31, 2021, to December 31, 2021.[15] On August 27, 2021, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to December 31, 2021.[16] On December 7, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–031, to extend the expiration date of the temporary amendments to, among other rules, FINRA Rule 9261 and 9830 from December 31, 2021, to March 31, 2022.[17] On December 27, 2021, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to March 31, 2022, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[18] On March 7, 2022, FINRA filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from March 31, 2022, to July 31, 2022.[19] On March 29, 2022, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to July 31, 2022.[20] On July 8, 2022, FINRA filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from July 31, 2022 to October 31, 2022.[21] On July 29, 2022, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to October 31, 2022.[22] On October 17, 2022, FINRA filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from October 31, 2022 to January 31, 2023.[23] On October 28, 2022, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to January 31, 2023, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[24]

According to FINRA, due to the upward trend in the number of COVID–19 cases since October 2022—when FINRA last filed to extend the temporary relief, COVID–19 still remains a public health concern.[25] For example, according to the Centers for Disease Control and Prevention (''CDC''), approximately 61.73 percent of counties in the United States have a medium or high COVID–19 Community Level based on the CDC's most recent calculations.[26] The daily average number of hospital admissions is also on the rise.[27] Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID–19 in the future given the emergence of new Omicron variants that the CDC currently is tracking[28] and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.[29] Due to the continued presence and uncertainty of COVID–19, FINRA believes that there is a continued need for temporary relief beyond January 31, 2023.[30] On January 18, 2023, FINRA accordingly filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from January 31, 2023 to April 30, 2023.[31]

[8] *See* 2013 Approval Order, 78 FR 15394, n.7 & 15400; 2013 Notice, 78 FR 5228 & 5234.

[9] *See* Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR–FINRA–2020–027) (the ''August 31 FINRA Filing'').

[10] *See* note 4, *supra.*

[11] *See* Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR–FINRA–2020–042).

[12] *See* Securities Exchange Act Release No. 90821 (December 30, 2020), 86 FR 644 (January 6, 2021) (SR–NYSE–2020–107).

[13] *See* Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR–FINRA–2021–006).

[14] *See* Securities Exchange Act Release No. 91629 (April 22, 2021), 86 FR 22505 (April 28, 2021) (SR–NYSE–2020–27).

[15] *See* Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR–FINRA–2021–019).

[16] *See* Securities Exchange Act Release No. 92907 (September 9, 2021), 86 FR 51421 (September 15, 2021) (SR–NYSE–2021–47).

[17] *See* Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695 (December 17, 2021) (SR–FINRA–2021–31).

[18] *See* Securities Exchange Act Release No. 93920 (January 6, 2022), 87 FR 1794 (January 12, 2022) (SR–NYSE–2021–78).

[19] *See* Securities Exchange Act Release No. 94430 (March 16, 2022), 87 FR 16262 (March 22, 2022) (SR–FINRA–2022–004).

[20] *See* Securities Exchange Act Release No. 94585 (April 1, 2022), 87 FR 20479 (April 7, 2022) (SR–NYSE–2022–17).

[21] *See* Securities Exchange Act Release No. 95281 (July 14, 2022), 87 FR 43335 (July 20, 2022) (SR–FINRA–2022–018).

[22] *See* Securities Exchange Act Release No. 95473 (August 11, 2022), 87 FR 50648 (August17, 2022) (SR–NYSE–2022–35).

[23] *See* Securities Exchange Act Release No. 96107 (October 19, 2022), 87 FR 64526 (October 25, 2022) (SR–FINRA–2022–029).

[24] *See* Securities Exchange Act Release No. 96259 (November 8, 2022), 87 FR 68544 (November 15, 2022) (SR–NYSE–2022–50).

[25] *See* Securities Exchange Act Release No. 96746 (January 25, 2023) (''SR–FINRA–2023–001'').

[26] *See* CDC, COVID Data Tracker—COVID–19 Integrated County View, *https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=all_states&list_select_county=all_counties&data-type=CommunityLevels&null=CommunityLevels* (last visited Jan. 9, 2023).

[27] *See* CDC, COVID Data Tracker Weekly Review—Daily Trend in Number of New COVID–19 Hospital Admissions in the United States, *https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html* (last visited Jan. 9, 2023) (''The current 7-day daily average for December 28, 2022–January 3, 2023, was 6,519. This is a 16.1% increase from the prior 7-day average (5,613) from December 21–27, 2022.'').

[28] These new Omicron variants include BQ.1.1, XBB.1.5 and BQ.1. *See* CDC, COVID Data Tracker—Variant Proportions, *https://covid.cdc.govicovid-data-trackerNvariant-proportions* (last visited Jan. 9, 2023).

[29] A state-by-state comparison of vaccination rates is available at *https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-people-additional-dose-totalpop* (*last visited Jan. 9, 2023*).

[30] *See* SR–FINRA–2023–001.

[31] *See generally* SR–FINRA–2023–001. As a further basis for extending the temporary rule relief until April 30, 2023, FINRA noted that its Board has approved the submission of a rule proposal to the Commission to make permanent, with some

Proposed Rule Change

Consistent with FINRA's recent proposal, the Exchange proposes to extend the expiration date of the temporary rule amendments to NYSE Rules 9261 and 9830 as set forth in SR–NYSE–2020–76 from January 31, 2023 to April 30, 2023.

As set forth in SR–FINRA–2023–001, due to the upward trend in the number of COVID–19 cases since October 2022—when FINRA last filed to extend the temporary relief, COVID–19 still remains a public health concern. For example, according to the Centers for Disease Control and Prevention (''CDC''), approximately 61.73 percent of counties in the United States have a medium or high COVID–19 Community Level based on the CDC's most recent calculations.[32] The daily average number of hospital admissions is also on the rise.[33] Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID–19 in the future given the emergence of new Omicron variants that the CDC currently is tracking [34] and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.[35] Due to the continued presence and uncertainty of COVID–19, FINRA believes that there is a continued need for temporary relief beyond January 31, 2023.[36] FINRA accordingly proposed to extend the expiration date of the temporary rule amendments from January 31, 2023 to April 30, 2023.

The Exchange proposes to similarly extend the expiration date of the temporary rule amendments to NYSE Rules 9261 and 9830 as set forth in SR–NYSE–2020–76 from January 31, 2023 to April 30, 2023. The Exchange agrees with FINRA that, due to the upward trend in the number of COVID–19 cases since October 2022—when FINRA last filed to extend the temporary relief, that COVID–19 still remains a public health concern. The Exchange also agrees that due to the continued presence and uncertainty of COVID–19, for the reasons set forth in SR–FINRA–2023–001, there is a continued need for this temporary relief beyond January 31, 2023. The proposed change would permit OHO to continue to assess, based on critical COVID–19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted in SR–FINRA–2023–001, in deciding whether to schedule a hearing by video conference, OHO may consider a variety of other factors in addition to COVID–19 trends. Similarly, as noted in SR–FINRA–2023–001, in SR–FINRA–2020–027, FINRA provided a non-exhaustive list of other factors OHO may take into consideration, including a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.[37] The Exchange believes that this is a reasonable procedure to continue to follow for hearings under Rules 9261 and 9830 chaired by a FINRA employee.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[38] in general, and furthers the objectives of Section 6(b)(5),[39] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[40]

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change, which extends the expiration date of the temporary amendments to Exchange rules consistent with FINRA's extension to its Rules 9261 and 9830 as set forth in SR–FINRA–2023–001, will permit the Exchange to continue to effectively conduct hearings given the continued presence and uncertainty of COVID–19. Given that COVID–19 remains a public health concern and the uncertainty around a potential spike in cases of the disease, without this relief allowing OHO to proceed by video conference, some or all hearings may have to be postponed.

The ability to conduct hearings by video conference will permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to continue to proceed without delay, thereby enabling the Exchange to continue to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

As set forth in detail in the SR–NYSE–2020–76, the temporary relief to permit hearings to be conducted via video conference maintains fair process and will continue to provide fair process consistent with Sections 6(b)(7) and 6(d) of the Act [41] while striking an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while avoiding the COVID–19-related public health risks for hearing participants. The Exchange notes that this proposal, like SR–NYSE–2020–76, provides only temporary

modifications, the temporary rules to allow hearings to be conducted by video conference originally set forth in SR–FINRA–2020–027 and SR–FINRA–2020–015. *See https://www.finra.org/about/governance/finra-board-governors/meetings/update-finra-board-governors-meeting-december-2022. See id.,* at n 14. FINRA indicated that the extension of the temporary rule amendments until April 30, 2023 would help avoid FINRA's rules reverting to their original form and allow FINRA time to file for (and the Commission time to approve) the permanent rules. *See id.*

[32] *See supra* note 26 (CDC, COVID Data Tracker—COVID–19 Integrated County View).

[33] *See supra* note 27 (CDC, COVID Data Tracker Weekly Review—Daily Trend in Number of New COVID–19 Hospital Admissions in the United States).

[34] *See supra* note 28 (regarding the new Omicron variants described in CDC, COVID Data Tracker—Variant Proportions).

[35] *See supra* note 29 (regarding state-by-state comparison of COVID–19 vaccination rates).

[36] *See* SR–FINRA–2023–001.

[37] *See* SR–FINRA–2023–001.

[38] 15 U.S.C. 78f(b).

[39] 15 U.S.C. 78f(b)(5).

[40] 15 U.S.C. 78f(b)(7) and 78f(d).

[41] 15 U.S.C. 78f(b)(7) and 78f(d).

relief. As proposed, the changes would be in place through April 30, 2023. As noted in SR–NYSE–2020–76 and above, the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.

Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed temporary rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to extend temporary relief necessitated by the continued presence and uncertainty of COVID–19 and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on January 31, 2023.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [42] and Rule 19b–4(f)(6) thereunder.[43] Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [44] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[45] 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 proposal may become operative immediately upon filing. The Exchange has indicated that there is a continued need to extend the temporary relief because the Exchange agrees with FINRA that the COVID–19 related health concerns necessitating this relief will continue beyond January 31, 2023.[46] The Exchange also states that extending the temporary relief provided in SR–NYSE–2020–76 immediately upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes so that the Exchange may continue to operate effectively and meet its critical investor protection goals, while also protecting the health and safety of hearing participants.[47] The Commission also notes that this proposal extends without change the temporary relief previously provided by SR–NYSE–2020–76.[48] As proposed, the temporary changes would be in place through April 30, 2023 and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[49] For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[50]

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B) [51] of the Act 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–NYSE–2023–10 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–NYSE–2023–10. 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

[42] 15 U.S.C. 78s(b)(3)(A)(iii).

[43] 17 CFR 240.19b–4(f)(6).

[44] 17 CFR 240.19b–4(f)(6).

[45] 17 CFR 240.19b–4(f)(6)(iii).

[46] *See supra* Item II; *see also* SR–FINRA–2023–001.

[47] *See* SR–FINRA–2023–001 (noting the same in granting FINRA's request to waive the 30-day operative delay so that SR–FINRA–2023–001 would become operative immediately upon filing).

[48] *See supra* note 4.

[49] *See supra* note 5. As noted above, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond April 30, 2023, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[50] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[51] 15 U.S.C. 78s(b)(2)(B).

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–NYSE–2023–10 and should be submitted on or before March 2, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[52]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–02713 Filed 2–8–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96800; File No. SR–FICC–2023–001]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Clearing Agency Risk Management Framework

February 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 January 30, 2023, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the Clearing Agency Risk Management Framework (''Risk Management Framework'', or ''Framework'') of FICC and its affiliates, The Depository Trust Company (''DTC'') and National Securities Clearing Corporation (''NSCC,'' and together with FICC, the ''CCPs'' and the CCPs together with DTC, the ''Clearing Agencies'').[5] Specifically, the proposed rule change would amend the Risk Management Framework to (1) update the description of the dashboards used by the Clearing Agencies as internal performance management tools to measure the effectiveness of their various operations; and (2) clarify and revise the descriptions of certain matters within the Framework and correct errors in those descriptions, as further described below. The proposed changes would update and clarify the Risk Management Framework but do not reflect changes to how the Clearing Agencies comply with the applicable requirements of Rule 17Ad–22(e), as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Clearing Agencies adopted the Risk Management Framework[6] to provide an outline for how each of the Clearing Agencies (i) maintains a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities; (ii) comprehensively manages legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by it; (iii) identifies, monitors, and manages risks related to links it establishes with one or more clearing agencies, financial market utilities, or trading markets; (iv) meets the requirements of its participants and the markets it serves efficiently and effectively; (v) uses, or at a minimum accommodates, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing and settlement; and (vi) publicly discloses certain information, including market data. In this way, the Risk Management Framework currently supports the Clearing Agencies' compliance with Rules 17Ad–22(e)(1), (3), (20), (21), (22) and (23) of the Standards,[7] as described in the Framework Filings. In addition to setting forth the manner in which each of the Clearing Agencies addresses these requirements, the Risk Management Framework also contains a section titled ''Framework Ownership and Change Management'' that, among other matters, describes the Framework ownership and the required governance process for review and approval of changes to the Framework. In connection with the annual review and approval of the Framework by the Board of Directors of each of NSCC, DTC and FICC (each a ''Board'' and collectively, the ''Boards''), the Clearing Agencies are proposing to make certain revisions to the Framework.

First, the proposed changes would update the Risk Management Framework to reflect a change to the dashboards used by the Clearing Agencies as internal performance management tools to measure the effectiveness of various aspects of their operations, as described in greater detail below.

The proposed changes would also clarify and enhance the descriptions in the Risk Management Framework and correct errors in those descriptions by, for example, (1) enhancing the description of the Clearing Agencies processes for management of certain risks through risk tolerance statements; (2) clarifying the description of the ''Three Lines of Defense,'' including but not limited to updating the descriptions of the ''first line of defense,'' the ''second line of defense,'' and the ''third line of defense,'' (3) clarifying the definition of Rules; (4) enhancing the description of the purpose and approval process of ''Risk Management Frameworks;'' and (5) updating the name of the Operational Risk Management group and the Third Party Risk function.

Finally, the proposed changes would capitalize terms that mistakenly were not previously capitalized but refer to a specific term, remove an unnecessary

[52] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] *See* Securities Exchange Act Release Nos. 81635 (September 15, 2017), 82 FR 44224 (September 21, 2017) (File Nos. SR–DTC–2017–013; SR–FICC–2017–016; SR–NSCC–2017–012) (''Initial Filing'') and Securities Exchange Act Release No. 89271 (July 09, 2020), 85 FR 42933 (July 15, 2020) (File No. SR–NSCC–2020–012); Securities Exchange Act Release No. 89269 (July 09, 2020), 85 FR 42954 (July 15, 2020) (File No. SR–DTC–2020–009); and Securities Exchange Act Release No. 89270 (July 09, 2020), 85 FR 42927 (July 15, 2020) (File No. SR–FICC–2020–007) (together with the Initial Filing, the ''Framework Filings'').

[6] *Supra* note 5.

[7] 17 CFR 240.17Ad–22(e)(1), (3), (20), (21), (22) and (23).

citation and make certain grammatical changes.

i. Proposed Amendments To Update the Description of Performance Measurement Tools

The proposed changes would update the Risk Management Framework to reflect a recent change to the dashboards that are used by the Clearing Agencies as internal performance management tools and address their compliance with the requirements of Rule 17Ad–22(e)(21).[8] Section 4.3 of the Framework identifies certain processes implemented by the Clearing Agencies to be efficient and effective in meeting the requirements of their respective participants and the markets they serve.[9] This list of processes is not meant to be exhaustive, and the Clearing Agencies may use other methods to achieve their goals and meet their regulatory requirements. The proposed change would update the Framework to remove reference to a process that was previously used by the Clearing Agencies to monitor their performance and the review standards for such processes.

The Clearing Agencies previously used the DTCC Core Balanced Scoreboard (''BBS'') to provide insight into the effectiveness of their various operations in meeting the needs of their participants and the markets they serve. The Clearing Agencies have eliminated the BBS and now utilize multiple other dashboards to measure the outcomes that were previously measured by the BBS. The elimination of the BBS is not a material change in how the Clearing Agencies approach risk management, as they are simply using other methods to continue to comply with the requirements of Rule 17Ad–22(e)(21).[10] The use of multiple dashboards allows for a more holistic view of the performance of the Clearing Agencies and their subsidiaries. The proposed change would also enhance the descriptions of these processes by describing the annual review of this process and how results are tracked.

ii. Proposed Amendment To Clarify, Enhance, and Correct Descriptions in the Framework

The proposed changes would improve the clarity and comprehensiveness of the descriptions of certain matters within the Risk Management Framework and correct grammatical errors in certain descriptions. Some specific examples of such proposed changes include:

1. Proposed Change To Describe the Clearing Agencies' Assessment and Review of Risk Tolerance Statements

Section 3 of the Framework describes management's responsibility to establish risk tolerance statements for the range of risks that arise in or are borne by the Clearing Agencies. Section 3 also outlines the review and approval process for such risk tolerance statements and the Clearing Agencies' performance relative to those statements. The proposed change would clarify that the Clearing Agencies' performance relative to those risk tolerance statements is assessed quarterly and is shared with senior management and the Board Risk Committees of the Clearing Agencies.

2. Proposed Changes To Clarify the Description of the ''Three Lines of Defense''

Section 3.1 of the Framework describes the ''three lines of defense'' approach adopted by each of the Clearing Agencies for identifying, assessing, measuring, monitoring, mitigating, and reporting the risks that arise in or are borne by it. A proposed change would remove the last sentence of this Section, which states, ''While the Framework provides a general description of the Three Lines of Defense approach for risk management, the Three Lines of Defense approach may be used by the Clearing Agencies for managing specific risks, for example operational risk, which is addressed in the Operational Risk Management Framework (see Section 3 below)'' This sentence is unnecessarily duplicative of the statements in Section 3.3.3 of the Framework which provides details of the various frameworks, separate and apart from this Framework, used by the Clearing Agencies to manage specific risks and, therefore, may cause confusion to a reader. The deletion of the sentence would resolve any such possible confusion, thereby clarifying the entirety of Section 3. The Clearing Agencies are also proposing a change to enhance the examples provided in Section 3.1.1 to illustrate the Clearing Agency Business/Support Areas role as the first line of defense in managing risk by adding two additional examples: (a) ''Defining and monitoring business risk metrics applicable to their function;'' and (b) ''Clearly understanding and reporting the residual, unmitigated risk that is acceptable to their function.'' Additionally, a proposed change to Section 3.1.3 would update the description of the responsibilities of internal audit to be in line with the internal audit charter.

3. Proposed Change To Clarify the Definition of ''Rules''

Section 3.3.2 of the Framework includes a defined term for the ''Rules'' of the Clearing Agencies. The proposed change would clarify that the ''Rules'' referred to for purposes of this Framework are filed with the Commission. Therefore, the proposed change would update the definition of Rules for clarification purposes and would not substantively change the definition.

4. Enhance the Description of the Purpose and Approval Process of ''Risk Management Frameworks''

Section 3.3.3 describes the system of frameworks, maintained by the Clearing Agencies, separate and apart from this Framework to manage a range of risks. This Section outlines in greater detail certain of these risk management frameworks and their purpose. The proposed changes to this Section 3.3.3 would enhance the description of one of these frameworks; clarify that such frameworks are in support of this Framework; and clarify that such frameworks may be approved by an applicable Board committee as delegated by the Boards, pursuant to the Document Standards described in this Framework.

5. Stating a Change to the Name of the Vendor Risk Management Group and to the Third-Party Risk Function Group

The Framework describes the role of the Operational Risk Management Group as the group that manages incidents, and the Third-Party Management Function manages third party risks to the Clearing Agencies. The proposed change would update the Framework to reflect a change in the name of these two groups. The Operational Risk Management Group is now referred to as Operational and Technology Risk and the Third-Party Risk Management group is now referred to as Third Party Risk. This proposed change would reflect a recent organizational name change.

6. Proposed Changes To Capitalize Defined Terms and Correct Grammatical and Formatting Errors, Removal of Citation

These proposed changes would fix grammatical errors and capitalize terms that should be defined terms in the Framework or removes inconsistent wording. Some of these changes include: (i) make IOSCO a defined term in footnote 2 for clarification purposes;

[8] 17 CFR 240.17Ad–22(e)(21).

[9] *Id.*

[10] *Supra* note 8.

(ii) change the word ''settlement'' to ''settling'' in Section 4.2 for consistency; (3) remove the words ''and Liquidity Providers'' from the heading ''*Risks Related to Investment Counterparties and Liquidity Providers*'' in Section 4.2.1 as the paragraph does not discuss liquidity providers and (4) deletion of footnote 21 as unnecessary.

The proposed rule change would make additional immaterial edits to the Framework that do not alter how the Clearing Agencies comply with the applicable requirements of Rule 17Ad–22(e).

2. Statutory Basis

The Clearing Agencies believe that the proposed changes are consistent with Section 17A(b)(3)(F) of the Act [11] for the reasons described below. Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[12] The proposed changes would (1) update the Risk Management Framework to remove reference to the BBS and include a description of the governance around the dashboards used by the Clearing Agencies to measure the effectiveness of their operations, and (2) clarify the descriptions of certain matters within the Framework to improve comprehensiveness and correct errors, as described above. By creating clearer, updated descriptions and correcting errors, the Clearing Agencies believe that the proposed changes would make the Risk Management Framework more effective in providing an overview of the important risk management activities of the Clearing Agencies, as described therein.

As described in the Framework Filings, the risk management functions described in the Risk Management Framework allow the Clearing Agencies to continue to promote the prompt and accurate clearance and settlement of securities transactions and continue to assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible notwithstanding the default of a member of an affiliated family. The proposed changes to improve the clarity and accuracy of the descriptions of risk management functions within the Framework would assist the Clearing Agencies in carrying out these risk management functions. Therefore, the Clearing Agencies believe these proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act.[13]

(B) Clearing Agency's Statement on Burden on Competition

The Clearing Agencies do not believe that the proposed changes to the Framework described above would have any impact, or impose any burden, on competition. As described above, the proposed rule change would improve the comprehensiveness of the Framework by creating clearer, updated descriptions and correcting errors, thereby making the Risk Management Framework more effective in providing an overview of the important risk management activities of the Clearing Agencies. As such, the Clearing Agencies do not believe that the proposed rule change would have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, *available at https://www.sec.gov/regulatory-actions/how-to-submitcomments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

FICC reserves the right not to respond to any comments 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) [14] of the Act and paragraph (f) [15] of Rule 19b–4 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.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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–FICC–2023–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–FICC–2023–001. 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

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] *Id.*

[13] *Id.*

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f).

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 FICC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–FICC–2023–001 and should be submitted on or before March 2, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–02718 Filed 2–8–23; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96798; File No. SR–FINRA–2022–015]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) To Release Information on BrokerCheck Relating to Firm Designation as a Restricted Firm

February 3, 2023.

I. Introduction

On June 3, 2022, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) to release information on BrokerCheck as to whether a particular member firm (hereinafter referred to as ''member firm'' or ''firm'') or former member firm is currently designated as a ''Restricted Firm'' pursuant to FINRA Rule 4111 (Restricted Firm Obligations) and FINRA Rule 9561 (Procedures for Regulating Activities Under Rule 4111).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The proposed rule change was published for comment in the **Federal Register** on June 17, 2022.[3] On July 20, 2022, FINRA consented to extend until September 15, 2022, the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[4] On September 15, 2022, FINRA responded to the comment letters received in response to the Notice.[5] On September 15, 2022, the Commission issued an order instituting proceedings to determine whether to approve or disapprove the proposed rule change.[6] On November 25, 2022, FINRA responded to the comment letters received in response to the Order Instituting Proceedings.[7] On November 25, 2022, FINRA consented to extend the time period in which the Commission must approve or disapprove the proposed rule change to February 10, 2023.[8] This order approves the proposed rule change.

[3] *See* Exchange Act Release No. 95092 (June 13, 2022), 87 FR 36551 (June 17, 2022) (File No. SR–FINRA–2022–015) (''Notice''). The Notice is available at *https://www.sec.gov/rules/sro/finra/2022/34-95092.pdf.*

[4] *See* letter from Michael Garawski, Associate General Counsel, FINRA, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, dated July 20, 2021. This letter is available at *https://www.finra.org/sites/default/files/2022-07/sr-finra-2022-015-extension1.pdf.*

[5] *See* letter from Michael Garawski, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated September 15, 2022 (''FINRA September 15 Letter''). The FINRA September 15 Letter is available at *https://www.sec.gov/comments/sr-finra-2022-015/srfinra2022015-20143024-308848.pdf.* Comments received on the proposed rule change are available at *https://www.sec.gov/comments/sr-finra-2022-015/srfinra2022015.htm.*

[6] *See* Exchange Act Release No. 95791 (September 15, 2022), 87 FR 57731 (September 21, 2022) (File No. SR–FINRA–2022–015) (''Order Instituting Proceedings''). The Order Instituting Proceedings is available at *https://www.sec.gov/rules/sro/finra/2022/34-95791.pdf.*

[7] *See* letter from Michael Garawski, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated November 25, 2022 (''FINRA November 25 Letter''). The FINRA November 25 Letter is available at *https://www.sec.gov/comments/sr-finra-2022-015/srfinra2022015-20151669-320145.pdf.*

[8] *See* letter from Michael Garawski, Associate General Counsel, FINRA, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, dated November 25, 2022. This letter is available at *https://www.finra.org/sites/default/files/2022-11/sr-finra-2022-015-extension2.pdf.*

II. Description of the Proposed Rule Change

A. Background

1. FINRA Rules 4111 (Restricted Firm Obligations) and 9561 (Procedures for Regulating Activities Under Rule 4111)

FINRA Rule 4111 established an annual process to designate member firms as ''Restricted Firms'' when the member firms present a high degree of risk to the investing public, based on numeric thresholds of firm-level and individual-level disclosure events, and then impose on such member firms a ''Restricted Deposit Requirement''[9] or, in addition or in the alternative, conditions or restrictions on the member firm's operations that are necessary or appropriate to protect investors and the public interest.[10] The rule is designed to protect investors and the public interest by strengthening the tools available to FINRA to address the risks posed by member firms with a significant history of misconduct.[11] It creates incentives for member firms to change behaviors and activities, either to avoid being designated or re-designated as a Restricted Firm.[12]

FINRA Rule 9561 established expedited proceedings that: (1) provide member firms an opportunity to request a hearing with FINRA's Office of Hearing Officers to approve or withdraw any and all of the requirements, conditions, or restrictions imposed by FINRA's Department of Member Regulation (the ''Department'') under FINRA Rule 4111;[13] and (2) enables

[9] *See* FINRA Rule 4111(i)(15) (definition of ''Restricted Deposit Requirement''). A firm subject to a Restricted Deposit Requirement will be required to establish a Restricted Deposit Account and deposit in that account cash or qualified securities with an aggregate value that is not less than the member's Restricted Deposit Requirement. *See* FINRA Rule 4111(a); 4111(i)(14) (definition of ''Restricted Deposit Account'').

[10] *See* Exchange Act Release No. 92525 (July 30, 2021), 86 FR 42925 (August 5, 2021) (Order Approving File No. SR–FINRA–2020–041, as Modified by Amendment Nos. 1 and 2) and Exchange Act Release No. 92525 (July 30, 2021), 86 FR 49589 (September 3, 2021) (Order Approving File No. SR–FINRA–2020–041) (Correction) (collectively, ''FINRA Rule 4111 Order'').

[11] *See* FINRA Rule 4111 Order, 86 FR 42926.

[12] *See id.* at 42926 and 42932.

[13] *See* FINRA Rule 9559(n)(6) (stating that ''[i]n any action brought under Rule 9561(a), the Hearing Officer may approve or withdraw any and all of the Rule 4111 Requirements, or remand the matter to the department that issued the notice for further consideration of specified matters, but may not modify any of the Rule 4111 Requirements imposed by the notice or impose any other requirements, obligations or restrictions available under Rule 4111. In any action brought under Rule 9561(b), the Hearing Officer may approve or withdraw the suspension or cancellation of membership, and may impose any other fitting sanction.''); *see also* FINRA Rule 4111 Order, 86 FR 42928 notes 55 and 65.

FINRA to address a member firm's failure to comply with any requirements imposed under FINRA Rule 4111.[14]

2. FINRA Rule 8312 (FINRA BrokerCheck Disclosure)

FINRA Rule 8312 (FINRA BrokerCheck Disclosure) governs the information FINRA releases to the public through its BrokerCheck system.[15] Information available to investors through BrokerCheck includes, among other things, information reported on the most recently filed ''Registration Forms'' (with limited exceptions) for both member firms and registered individuals, and summary information about certain arbitration awards against the firm involving a securities or commodities dispute with a public customer.[16] This information includes a description of where and when the firm was established, people and entities that own controlling shares or directly influence the firm's daily operations, a firm's history that details mergers, acquisitions or name changes affecting the firm, the firm's active licenses and registrations, the types of businesses it conducts, information about arbitration awards and disciplinary matters, and information as to whether a particular member is subject to FINRA Rule 3170 (Tape Recording of Registered Persons by Certain Firms) (the ''Taping Rule''),[17] among other information and disclosures.[18] FINRA stated that BrokerCheck helps investors make informed choices about the brokers and member firms with which they conduct business by providing registration and disciplinary history to investors at no charge.[19]

B. Proposed Amendments to FINRA Rule 8312

The proposed rule changes would amend FINRA Rule 8312 to release information on BrokerCheck as to whether a particular member firm or former member firm is currently designated as a Restricted Firm pursuant to FINRA Rules 4111 and 9561. Information that a member firm is currently a Restricted Firm would be displayed in BrokerCheck on both the firm's Summary Report and Detailed Report.[20] Specifically, those reports would include the text, ''This firm is currently designated as a Restricted Firm pursuant to FINRA Rule 4111 (Restricted Firm Obligations),'' in a color or font that is prominent. The alert also would include the text ''Click here for more information,'' with a hyperlink to a page on FINRA's website that provides for the investing public a clear explanation of FINRA Rule 4111 and what it means to be a Restricted Firm.[21] Under the proposed rule change, this information would be displayed during the course of any FINRA Rule 9561 expedited proceeding to review the Department's decision, since the effectiveness of FINRA's decision that designates a member firm as a Restricted Firm will not be stayed during these proceedings.[22]

FINRA explained that disclosing on BrokerCheck the member firms and former member firms that are currently designated as Restricted Firms would ''provide material information to investors concerning the identity of firms that FINRA has determined pose far higher risks to the public than firms of similar size,'' while incentivizing investors to ''research more carefully the background of the firm.''[23] In addition, FINRA expressed that the public disclosure of the member firms and former member firms currently designated as Restricted Firms would create additional incentives for those firms with a significant history of misconduct to change behaviors and activities to reduce risk.[24]

If the proposed rule change is approved, FINRA stated that it will announce an effective date that is after the date FINRA completes the first annual FINRA Rule 4111 cycle, but no later than the ''Evaluation Date''[25] for the second annual FINRA Rule 4111 cycle.[26] FINRA stated that after the effective date, FINRA would make the relevant disclosures on BrokerCheck beginning with the member firms or former member firms that are designated or re-designated as Restricted Firms in the second annual FINRA Rule 4111 cycle.[27] FINRA stated that this would allow FINRA to gain meaningful experience with new FINRA Rule 4111, including any operational shortcomings, before FINRA begins disclosing Restricted Firms on BrokerCheck.[28]

III. Discussion and Commission Findings

After careful review of the proposed rule change, the comment letters,[29] and

[14] FINRA Rule 4111 Order, 86 FR 42931.

[15] According to FINRA, users of BrokerCheck include, among others, investors, member firms and other entities in the financial services industry, regulators, and individuals registered as brokers or seeking employment in the brokerage industry. *See* Notice, 87 FR 36553. FINRA requires member firms to inform their customers of the availability of BrokerCheck. *See* FINRA Rule 2210(d)(8) (requiring that each of a member's websites include a readily apparent reference and hyperlink to BrokerCheck on the initial web page that the member intends to be viewed by retail investors and any other web page that includes a professional profile of one or more registered persons who conduct business with retail investors) and FINRA Rule 2267 (requiring members to provide to customers the FINRA BrokerCheck Hotline Number and a statement as to the availability to the customer of an investor brochure that includes information describing BrokerCheck); *see also* Notice, 87 FR 36552 note 12 and accompanying text (stating FINRA requires member firms to inform their customers of the availability of BrokerCheck). The BrokerCheck website is available at *brokercheck.finra.org. See* Notice, 87 FR 36552 note 11.

[16] *See* Notice, 87 FR 36552 note 13; *see also* FINRA Rule 8312(b)(2)(A) (using the term ''Registration Forms'' to refer collectively to the Uniform Application for Securities Industry Registration or Transfer (Form U4), the Uniform Termination Notice for Securities Industry Registration (Form U5), the Uniform Disciplinary Action Reporting Form (Form U6), the Uniform Application for Broker-Dealer Registration (Form BD), and the Uniform Request for Broker-Dealer Withdrawal (Form BDW)).

[17] For further information regarding the Taping Rule see *infra* note 21 and accompanying text.

[18] *See* Notice, 87 FR 36553–54. On its website, FINRA elaborates on the contents of a firm's BrokerCheck report. Specifically, FINRA states that the BrokerCheck report includes, among other things, a summary report, providing ''a brief overview of the firm and its background'' (''Summary Report''), and a more detailed report, providing ''information about any arbitration awards, disciplinary events, and financial matters on the firm's record,'' including ''pending actions or allegations that have not been resolved or proven'' (''Detailed Report''). The website is available at *https://www.finra.org/investors/learn-to-invest/choosing-investment-professional/about-brokercheck.*

[19] *See* Notice, 87 FR 36552.

[20] For further information regarding the Summary Report and Detailed Report displayed on BrokerCheck see *supra* note 18.

[21] This disclosure would be made in a similar manner to how FINRA discloses on BrokerCheck that a member firm is a ''taping firm'' pursuant to the Taping Rule. *See* Exchange Act Release No. 90635 (December 10, 2020), 85 FR 81540 (December 16, 2020) (File No. SR–FINRA–2020–011) (approving the disclosure of information as to whether a particular member firm is a Taping Firm). In that case, FINRA provides a simplified disclosure that a firm is subject to the Taping Rule on the firm's Summary Report on BrokerCheck, along with a hyperlink to a separate page on FINRA's website containing a clear, more detailed description of what it means to be a taping firm. *See* Notice, 87 FR 36552 note 19; *see also* FINRA Rule 8312(b)(2)(F).

[22] *See* Notice, 87 FR 36552; *see also* FINRA Rule 9561(a)(4) (Effectiveness of the Rule 4111 Requirements).

[23] *See* Notice, 87 FR 36552.

[24] *See id.* at 36552–53.

[25] *See* FINRA Rule 4111(i)(5) (definition of ''Evaluation Date''). FINRA established June 1, 2022 as the first Evaluation Date for FINRA Rule 4111, and indicated it expects the Evaluation Date in subsequent years will also be June 1. *See* FINRA Information Notice 2/1/22, *FINRA Announces Rule 4111 (Restricted Firm Obligations) Evaluation Date* (Feb. 1, 2022) at note 12. The FINRA Information Notice 2/1/22 is available at *https://www.finra.org/rules-guidance/notices/information-notice-020122.*

[26] *See* Notice, 87 FR 36553.

[27] *See id.*

[28] *See id.*

[29] *See* letter from Francis J. Skinner, Esq., Chief Legal Office, CoastalOne, dated July 6, 2022 (''CoastalOne Letter''); letter from Nicole G. Iannarone, Assistant Professor of Law, Drexel University Thomas R. Kline School of Law, and

Continued

FINRA's responses to the comments, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.[30] Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[31]

As discussed in more detail below, four commenters supported the proposed rule change.[32] One of these commenters supported adoption of the proposed rule change without modification.[33] Three of these commenters recommended that FINRA make additional changes to enhance the presentation of the BrokerCheck disclosure.[34] Two of these commenters also recommended that FINRA disclose on BrokerCheck the historical Restricted Firm designations of member firms and former member firms.[35]

Three commenters opposed the proposed rule change.[36] One of these commenters opposed the proposed rule change because it would only require FINRA to disclose whether a member firm is currently designated as a Restricted Firm, but not all historical Restricted Firm designations.[37] Two of these commenters opposed any proposed rule change to publicly disclose Restricted Firm designations on BrokerCheck because they assert that such disclosure could irreparably harm those firms and their personnel.[38] One of these commenters recommended that, if Restricted Firm designations are disclosed, FINRA amend the proposed rule change to give those firms the opportunity to appeal their Restricted Firm designation through a FINRA Rule 9561 expedited proceeding before disclosing their restricted status.[39] Further, one commenter stated that the proposed rule change is unnecessary because information about the events giving rise to the Restricted Firm designation are already publicly available on BrokerCheck.[40]

A. Support for Adopting Rule as Proposed

One of the commenters who supported the proposed rule change favored adopting the proposed rule change without modification, stating that Restricted Firm designations ''should be public information.''[41] More specifically, this commenter stated that such disclosure would be ''consistent with the purpose of BrokerCheck,''[42] serving as ''clear, simple, and warranted notice to investors to think carefully before doing business with these firms and their associated persons.''[43] This commenter further stated the disclosures included in the proposed rule change would advance the goal of investor protection, pointing to studies indicating that ''past disclosures can be powerful indicators of future misconduct.''[44] Moreover, this commenter stated that disclosure of Restricted Firm designations on BrokerCheck would ''facilitate remediation of underlying issues'' by ''incentiviz[ing firms] to be more proactive in taking remedial measures . . . to avoid being designated as a Restricted Firm.''[45] This commenter also stated that the proposed rule change is consistent with the similar required disclosure on BrokerCheck of firms whose behavior is subject to restrictions under the Taping Rule.[46] Finally, this commenter stated the proposed rule change would provide state securities examiners with information that would help ''enhance risk assessments, simplify examinations, and alleviate potential misunderstandings and wasted effort during examinations,'' as it would make such examiners aware that the named firms were likely subject to certain conditions and restrictions, including the possibility of a Restricted Deposit Requirement.[47]

B. Recommended Enhancements to Presentation of BrokerCheck Disclosure

Three of the commenters who generally supported FINRA's proposed rule change recommended that FINRA make additional changes to help further improve BrokerCheck disclosure.[48] Two of these commenters recommended that FINRA enhance the presentation of the disclosures made on BrokerCheck.[49] One of these commenters expressed concern that investors were unfamiliar with BrokerCheck and how to use it[50] and therefore recommended that FINRA establish ''an investor outreach program or marketing effort that draws attention to the importance of BrokerCheck and the types of information that can be found there.''[51]

FINRA responded that it appreciated the commenter's suggestion, stating that it ''has taken, and continues to take various measures to increase investor awareness of BrokerCheck.''[52] For example, FINRA pointed to its adoption of rules that: (1) require any member firm website to include a ''readily apparent reference and hyperlink to BrokerCheck'' on the web page the firm

Christine Lazaro, Professor of Clinical Legal Education and Director of the Securities Arbitration Clinic, St. John's University School of Law, dated July 7, 2022 (''Drexel and St. John's Letter''); letter from Michael Edmiston, President, Public Investors Advocacy Bar Association (''PIABA''), dated July 8, 2022 (''PIABA Letter''); letter from Mark Quinn, Director of Regulatory Affairs, Cetera Financial Group, dated July 8, 2022 (''Cetera Letter''); letter from Steven B. Caruso, dated September 21, 2022 (''Caruso Letter''); letter from William A. Jacobson, Clinical Professor of Law, Cornell Law School, and Director, Cornell Securities Law Clinic and Erik Olson, Class of 2024, Cornell Law School, dated October 10, 2022 (''Cornell Law Letter''); and letter from Andrew Hartnett, NASAA President, NASAA, and Deputy Administrator for Securities, Iowa Insurance Division, dated October 12, 2022 (''NASAA Letter'').

[30] In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[31] 15 U.S.C. 78*o*–3(b)(6).

[32] *See* NASAA Letter; PIABA Letter; Drexel and St. John's Letter; and Cornell Law Letter.

[33] *See* NASAA Letter at 2.

[34] *See* PIABA Letter at 1; Drexel and St. John's Letter at 2; and Cornell Law Letter at 2.

[35] *See* Drexel and St. John's Letter at 2; Cornell Law Letter at 3.

[36] *See* Caruso Letter; CoastalOne Letter; and Cetera Letter.

[37] *See* Caruso Letter at 2.

[38] *See* CoastalOne Letter at 3 and Cetera Letter at 2.

[39] *See* Cetera Letter at 3.

[40] *See* CoastalOne Letter at 2.

[41] *See* NASAA Letter at 2.

[42] *Id.*

[43] *Id.* at 2.

[44] *Id.* (citing Mark Egan et al., The Market for Financial Adviser Misconduct, at 3, 12–15, and 52 Fig. 4 (Feb. 2016), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2739170;* Hammad Qureshi & Jonathan Sokobin, Do Investors Have Valuable Information About Brokers?, at 17 (FINRA Office of the Chief Economist Working Paper, Aug. 2015), available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2652535*).

[45] *Id.*

[46] *See id.* at 3; *see also* FINRA Rule 8312(b)(2)(F).

[47] NASAA Letter at 3–4.

[48] *See* PIABA Letter at 1 (stating that ''making this information about firms publicly available on BrokerCheck is the common-sense next step to the newly adopted FINRA Rule 4111 and comports with that rule's intended investor protection goal''); Drexel and St. John's Letter at 2 (stating that ''[d]isclosure of restricted firm status would further improve BrokerCheck and allow retail investors to make more informed choices and ask pertinent questions to financial professionals before engaging them''); and Cornell Law Letter at 2 (stating that the proposed rule change would help investors by making this information more easily accessible, and would help explain to investors the meaning of such a designation, providing ''a more accurate view of the firm they are considering'').

[49] *See* PIABA Letter at 1 and Drexel and St. John's Letter at 2.

[50] *See* PIABA Letter at 1 (stating that ''[m]ost investors have no idea that their trusted financial professionals and firms had disclosure events, despite the fact that they were disclosed on BrokerCheck'').

[51] PIABA Letter at 1.

[52] FINRA September 15 Letter at 7.

intends retail investors to view, along with ''any other web page that includes a professional profile of one or more registered persons who conduct business with retail investors;'' [53] and (2) require member firms to ''provide to customers the FINRA BrokerCheck Hotline Number and a statement as to the availability to the customer of an investor brochure that includes information describing BrokerCheck.'' [54] Finally, FINRA stated that it also already ''regularly promotes'' awareness of BrokerCheck through the media, its own social media channels, and at various investor-focused events.[55]

The other commenter stated that it ''[does] not believe a link to the rule on its own would be enough for unsophisticated retail investors to understand the importance of the disclosure and make an informed decision about working with such a firm'' and therefore recommended that FINRA ''provide a plain English explanation of what [R]estricted [F]irm designation means on the BrokerCheck report if a firm is so designated.'' [56]

FINRA responded that the proposed disclosure on BrokerCheck would be designed to include hyperlinks not only to FINRA Rule 4111, ''but also to a page on FINRA's website that provides for the investing public a clear explanation of FINRA Rule 4111 and what it means to be a Restricted Firm.'' [57] FINRA stated that it chose to provide this explanation through a hyperlink to a separate web page to facilitate BrokerCheck usability, as ''the explanation of what it means to be a Restricted Firm would be several paragraphs long,'' and its inclusion at the top of the relevant firms' BrokerCheck reports would necessitate using a font ''too small to be easily readable'' due to space constraints.[58] FINRA asserted that it believes, based on ''general user testing'' of BrokerCheck, that inclusion of this information on each member firm and former member firm's BrokerCheck report would ''create a cluttered presentation that has a detrimental impact on the user's experience.'' [59] Despite this, FINRA indicated that it appreciated the commenters' suggestions, and stated it would ''revisit this presentation choice as part of its routine monitoring of BrokerCheck information design'' if the proposed rule change is approved.[60]

One of the opposing commenters similarly stated that without further guidance, disclosure of Restricted Firm status on BrokerCheck would be confusing and misleading to the general public.[61] This commenter stated that although FINRA stated in the Notice that it would provide a hyperlink to additional information defining Restricted Firm, without an example of the proposed linked web page the commenter could not opine on its adequacy. Moreover, the commenter stated that there is no guarantee that investors researching a member firm on BrokerCheck would access the hyperlink.[62]

In its response, FINRA disagreed with the commenter's assessment, stating that the proposed rule change would provide investors with clear and accurate information about Restricted Firms and that the specific display of those firms' Restricted Firm designation on BrokerCheck would make this status more readily apparent to investors.[63] Further, FINRA stated that, under the proposed rule, FINRA would present both the information about a member firm's restricted status on BrokerCheck, as well as a hyperlink to a separate page providing a more detailed explanation of what it means to be a Restricted Firm, in the same manner as FINRA discloses similar information about member firms currently subject to the Taping Rule.[64]

The Commission finds that FINRA's proposal to disclose Restricted Firm designations is reasonable, and that the proposed rule change would enhance the investor-protection benefits of FINRA Rule 4111. As with the Taping Rule disclosures, the proposed rule change would make it easier for investors to obtain information about member firms that are currently designated as Restricted Firms, as well as those registered representatives associated with those member firms, through a preexisting database with which the public is already familiar. Moreover, the proposed rule change would incentivize investors to research more carefully the background of their financial professionals.

Furthermore, the proposed rule change will add an alert to a member firm's Summary Report that the member firm is currently designated as a Restricted Firm, in conjunction with a link to a separate web page with a description of what this designation entails. A firm's Summary Report is meant to provide readers with an overview of information pertinent to their decision to hire or retain a financial professional. And, BrokerCheck is already structured to employ hyperlinks directing investors to more detailed information, both as to a firm's Detailed Report, and in the case of firms subject to restrictions under the Taping Rule, a hyperlink to a page providing a detailed explanation of the more simplified disclosure found on the firm's Summary Report. As such, the Commission believes FINRA's proposed further use of layered disclosure of summary information combined with the proposed use of hyperlinks to direct investors to more detailed information on what a Restricted Firm designation entails is reasonable, as it aligns with an approach to disclosure on BrokerCheck that investors are already familiar with. In doing so, the proposed rule change appropriately balances investors' need for information about the significance of a Restricted Firm designation with the need to bring the most salient information to the attention of investors in a user-friendly manner. Accordingly, for the reasons set forth above, the Commission finds that the proposed rule change is designed to protect investors and the public interest.

C. Recommended Disclosure of Historical Restricted Firm Designations

As discussed above, the proposed rule change would impose a disclosure obligation on FINRA as to the current Restricted Firm designations it has made. One commenter opposed the proposed rule change because it would not require FINRA to disclose historical Restricted Firm designations.[65] This commenter stated that ''BrokerCheck helps investors make informed choices about the brokers and member firms with which they conduct business by providing registration and disciplinary history to investors.'' [66] As such, the proposed rule change would be ''inconsistent with this historical disciplinary predicate,'' as it would only require the release of information about current Restricted Firm designations.[67] Separately, this commenter stated that requiring the release of information on BrokerCheck of only current Restricted Firm designations ''would be inconsistent with the disclosure requirements on Form BD which, in questions 11E(3) and (4), requires disclosure as to whether any self-

[53] *Id.* (citing FINRA Rule 2210(d)(8)).
[54] *See id.* at 7–8 (citing FINRA Rule 2267).
[55] *See id.* at 8.
[56] *See* Drexel and St. John's Letter at 2.
[57] *See* FINRA September 15 Letter at 6.
[58] *See id.*
[59] *See id.*
[60] *See id.*
[61] *See* CoastalOne Letter at 2.
[62] *See id.*
[63] *See* FINRA September 15 Letter at 5.
[64] *See id.*
[65] *See* Caruso Letter at 2.
[66] *Id.*
[67] *Id.*

regulatory organization has 'ever' either 'restricted' the activities of a member firm or 'otherwise restrict[ed] its activities.' '' [68] This commenter stressed that if the purpose of both BrokerCheck and Form BD is to help investors make more informed choices by providing registration and disciplinary history of firms to investors, then ''the fact that a member firm was ever designated as a Restricted Firm is information that is clearly critical and material to investors.'' [69]

Two other commenters that supported the proposed rule change also recommended that FINRA disclose on BrokerCheck a member firm's historical Restricted Firm designations.[70] One such commenter stated that ''[a] historic record of when—and how many times—a firm has been a restricted firm assists investors in making informed decisions.'' [71] This commenter further stated that requiring FINRA to disclose historical Restricted Firm designations would incentivize member firms and associated persons ''to reform and not engage in future misconduct'' because a prospective customer observing on BrokerCheck ''a lengthy period of time after a restricted firm designation has been removed may signal that a firm has made significant positive changes.'' [72]

In response to comments that disclosing only current, but not historical, Restricted Firm designations would be inconsistent with how a member firm's ''disciplinary history'' is disclosed on BrokerCheck, FINRA noted that it has previously stated that, in its view, ''a Restricted Firm designation is not disciplinary in nature.'' [73] Instead, FINRA stated that it believes that disclosure of Restricted Firm designations more directly analogizes ''to how Rule 8312 requires the disclosure of information as to whether a particular member firm 'is' subject to the provisions of [the Taping Rule].'' [74] Regarding a commenter's assertion that disclosure of only current Restricted Firm designations would be inconsistent with the disclosure requirements of Questions 11E(3) and (4) on Form BD, FINRA stated that the proposed rule change ''would not impact a firm's obligations under Form BD or alter how Rule 8312 requires the release on BrokerCheck of 'any information reported on the most recently filed . . . Form BD.' '' [75]

FINRA further stated that it believes the potential for a Restricted Firm disclosure to be removed from BrokerCheck would provide ''a strong incentive'' to Restricted Firms to improve their behavior, and ''thus, would further the primary purpose of Rule 4111 itself.'' [76] However, FINRA stated that it appreciated the suggestion to disclose all historical Restricted Firm designations, and ''will revisit it after gaining experience with disclosing Restricted Firm designations on BrokerCheck.'' [77]

The Commission finds that the proposed rule change for FINRA to prominently display current Restricted Firm designations on BrokerCheck is reasonable, and that such disclosure would enhance the investor protection benefits provided by FINRA Rule 4111. Specifically, the disclosure of current Restricted Firm designations on BrokerCheck would provide investors with valuable information in an easily accessible format, including FINRA's determination that a firm currently has a higher risk profile relative to similar firms, and that the firm may be subject to certain conditions and/or restrictions on its operations.

Further, FINRA's determination not to require disclosure of a historical Restricted Firm designation is reasonable. The potential for removal from BrokerCheck of the prominent display of a current Restricted Firm designation once the firm is no longer so-designated could incentivize currently Restricted Firms to improve their behavior, and thereby benefit investors.[78] FINRA's approach with this proposed disclosure obligation is also consistent with its approved approach to disclosing a member firm's Taping Firm status pursuant to FINRA Rule 3170.[79]

The Commission also acknowledges FINRA's commitment to revisit the proposed rule change (including commenters' suggestions to require disclosure on BrokerCheck of the historical Restricted Firm's designations of member firms and former member firms pursuant to this rule) after gaining experience with disclosing Restricted Firm designations on BrokerCheck.[80]

The Commission also finds that the proposed rule change would not be inconsistent with the approach to disclosure of a member firm or former member firm's disciplinary history on BrokerCheck. The disclosure of such firm's disciplinary history on BrokerCheck flows from the information reported on Registration Forms (including Form BD),[81] and appears in the firm's Detailed Report within a discrete ''Disclosure Events'' section. As FINRA stated, the proposed rule change would have no impact on such disclosures. Relatedly, the Commission also finds that the proposed rule change would not be inconsistent with a firm's disclosure obligations under Form BD. The proposed rule change would not impact any of the requirements imposed upon firms by Form BD, or amend FINRA's obligation under FINRA Rule 8312 to release on BrokerCheck ''any information reported on the most recently filed . . . Form BD.'' [82] Instead, the proposed rule change would only impose a distinct disclosure obligation on FINRA as to the current Restricted Firm designations it has made.

For the reasons discussed above, the proposed rule change to require FINRA to prominently display current Restricted Firm designations on BrokerCheck is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

D. Potential Harm to Firms and Their Personnel of Disclosing Restricted Status

Two commenters opposed any proposed rule change to publicly

[68] *Id. See also* Form BD, the Uniform Application for Broker-Dealer Registration. 17 CFR 249.501, available at *https://www.sec.gov/files/formbd.pdf* (asking in Questions 11E(3) and (4) whether ''any self-regulatory organization or commodities exchange ever: . . . (3) found the applicant or a control affiliate to have been the cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted?; (4) disciplined the applicant or a control affiliate by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities?'').

[69] Caruso Letter at 2.

[70] *See* Drexel and St. John's Letter at 2; Cornell Law Letter at 3.

[71] Drexel and St. John's Letter at 2.

[72] *Id.*

[73] *See* FINRA November 25 Letter at 3 (citing to Notice, 85 FR 78566).

[74] *Id.* (citing to FINRA Rule 8312(b)(2)(F)).

[75] *Id.* at 4 (citing to FINRA Rule 8312(b)(2)(A)). FINRA also noted that it had ''previously acknowledged that 'information about a firm's status as a Restricted Firm . . . could become publicly available through existing sources or processes,' such as 'through Form BD.' '' *See* Notice, 85 FR 78467 note 159.

[76] FINRA November 25 Letter at 3.

[77] *See* FINRA September 15 Letter at 8 and note 24; *see also* FINRA November 25 Letter at 3 (reiterating FINRA's assertion that the lack of disclosure of historical Restricted Firm designations would incentivize currently Restricted Firms to improve their behavior).

[78] *See infra* note 95 and accompanying text (identifying examples of how FINRA believes firms that are currently designated as Restricted Firms could improve their behavior).

[79] *See supra* note 21; *see also* FINRA Rule 8312(b)(2)(F).

[80] *See* FINRA November 25 Letter at 4.

[81] *See* FINRA Rule 8312(b)(2)(A).

[82] *Id.*

disclose Restricted Firm designations on BrokerCheck because they assert that such disclosure could irreparably harm those firms and their personnel.[83] In particular, one commenter stated that while FINRA Rule 4111 enhances investor protection by ''giving FINRA additional authority to enforce compliance with its rules, encourage member firms toward more compliant business models, and better ensure that firms are able to meet their financial obligations to customers or potential claimants,'' publicly identifying Restricted Firms on BrokerCheck pursuant to the proposed rule change would likely ''undercut the effectiveness of Rule 4111.'' [84] The commenter stated that while the information ''would be relevant to investors in determining whether to establish relationships with or continue to do business with [a firm,] the negative connotation [would] increase the likelihood that the firm will fail.'' [85] Further, the commenter stated the possibility of failure would ''make [the firm] less able to meet its obligations to customers, and perhaps worse, increase the possibility of disorderly failure or closure.'' [86] As a result, this commenter stated that ''customers may well be worse off than had the restricted status of the firm not been disclosed.'' [87]

The other commenter stated that the disclosure of a member firm's Restricted Firm status would be a ''Scarlet Letter'' that would have a ''severe economic impact'' upon the member firm, and would ''serve[ ] no purpose other than to put additional financial strain on Restricted Firms.'' [88] This commenter stated that this additional financial strain would result from the fact that: (1) some existing and prospective customers would no longer do business with the member firm; and (2) the member firm would lose, and have trouble recruiting, good employees, which is contrary to FINRA's goal of improving ''bad'' member firms.[89] Accordingly, this commenter stated that the harm to Restricted Firms and their personnel under the proposed rule change would outweigh the potential investor protections.[90] This commenter also stated that FINRA's Notice failed to identify or discuss ''any objective evidence which would demonstrate the effectiveness'' of providing disclosure of a member firm's designation as a Restricted Firm on BrokerCheck.[91] Without such evidence and understanding of the impact of the proposed rule change, the commenter stated that ''FINRA is proposing a rule which has no rational basis to support its implementation,'' and thus that it should be reconsidered.[92]

In response, FINRA cited its Notice and the economic impact analysis therein, which detailed a range of the potential economic impacts of the proposed rule change, and which FINRA stated is ''consistent with FINRA's approach to economic impact assessments for proposed rulemakings.'' [93] Among the benefits to investors outlined in FINRA's economic impact analysis is that the proposed rule change ''may . . . prompt[ ] [investors] to learn more about such Restricted Firms, engage[ ] with them more cautiously, or—for investors currently using the services of Restricted Firms—critically review their experiences with these firms,'' which ''may help some investors avoid the harms associated with future misconduct.'' [94] FINRA stated that due to this additional investor caution, ''Restricted Firms may respond by offering more competitive pricing or improved customer service . . . [and] may also act to improve internal controls in order to avoid additional reputational harm and being re-designated as a Restricted Firm in subsequent years.'' [95]

FINRA also stated that additional investor caution, along with potential reactions by third parties,[96] may lead to financial distress at a Restricted Firm.[97] While FINRA indicated that the ''magnitude of those reactions cannot be quantified,'' it acknowledged that some Restricted Firms may go out of business; but these potential impacts should be mitigated by the inclusion of ''numerous features'' within the FINRA Rule 4111 process that are ''designed to narrowly focus the new obligations on the firms of the most concern.'' [98]

Further, FINRA cited regulatory frameworks designed to help mitigate the potential impact on investors should the public disclosure of a member firm's Restricted Firm designation lead to a member firm's failure, such as the Net Capital Rule,[99] the Customer Protection Rule,[100] and the Securities Industry Protection Corporation (SIPC).[101] To the extent there are any residual risks to customers, FINRA stated that ''they would be outweighed by the investor-protection benefits from publicly

[83] *See* CoastalOne Letter at 3 and Cetera Letter at 2.

[84] Cetera Letter at 1–2.

[85] *Id.* at 2.

[86] *Id.* In particular, the commenter opined that public disclosure of Restricted Firm status may ''create 'run on the bank' situation[s] in which representatives and customers leave the firm quickly and cause it to fail.'' *Id.*

[87] *Id.*

[88] CoastalOne Letter at 2 (stating that ''[u]nder Rule 4111, FINRA may impose upon a Restricted Firm a monetary cash escrow deposit which FINRA will effectively control, and that sum cannot be calculated in net capital. This alone will put some small firms on the edge of net capital failure. In addition, FINRA may order other remedies, such as shorte[r] examination cycles, which result in additional overhead costs to firms. Those remedies alone are sufficient to achieve FINRA's purposes in Rule 4111.''). The commenter concluded that the proposed rule change is an ''unnecessary 'add-on' to a [r]ule which is already extremely punitive in nature.'' *Id.*

[89] *See id.*

[90] *See id.*

[91] *Id.* at 1.

[92] *Id.*

[93] FINRA September 15 Letter at 7 and note 22 (citing Framework Regarding FINRA's Approach to Economic Impact Assessment for Proposed Rulemaking, available at *https://www.finra.org/sites/default/files/Economic%20Impact%20Assessment_0_0.pdf*). In the Notice, FINRA discussed the qualitative impact to investors, firms and financial professionals of the disclosure of Restricted Firm designations. For example, FINRA stated that ''[w]hile the magnitude of . . . reactions from investors and third parties cannot be quantified, it is possible that the disclosure of the designation as a Restricted Firm may result in some firms going out of business.'' *See* Notice, 87 FR 36554.

[94] Notice, 87 FR 36554; *see also* FINRA September 15 Letter at 2–3.

[95] Notice, 87 FR 36554; *see also* FINRA September 15 Letter at 2–3.

[96] FINRA stated that ''Restricted Firms may have greater difficulty or increased costs associated with maintaining a clearing arrangement, loss of trading partners, or similar impairments where third parties can determine that a firm meets the Preliminary Criteria for Identification or has been deemed to be a Restricted Firm. While some third parties like clearing firms may require a firm to disclose Restricted Firm status during private contract negotiations, other third-party firms may learn of a Restricted Firm's designation only after the information is disclosed publicly. These third-party firms may anticipate an increase in legal and contingent costs through the potential liabilities that they face through their business relationships with a Restricted Firm. As a result, Restricted Firms may find that costs of these third-party agreements increase and potentially lose access to such providers.'' Notice, 87 FR 36554 (citing Exchange Act Release No. 90527 (November 27, 2020), 85 FR 78540 (December 4, 2022) (File No. SR–FINRA–2020–041) (''Rule 4111 Notice''), available at *https://www.sec.gov/rules/sro/finra/2020/34-90527.pdf*); *see also* FINRA September 15 Letter at 3.

[97] *See* FINRA September 15 Letter at 3 (citing Notice, 87 FR 36554).

[98] *Id.* at 3 (citing Rule 4111 Notice).

[99] Exchange Act Rule 15c3–1 (Net Capital Rule) requires broker-dealers to maintain certain levels of liquid assets.

[100] Exchange Act Rule 15c3–3 (Customer Protection Rule) requires broker-dealers that have custody of customer assets to keep those assets separate from their own accounts.

[101] *See* FINRA September 15 Letter at note 13 (stating that ''when a brokerage firm liquidates, securities regulators 'work with the firm to make sure that customer accounts are protected and that customer assets are transferred in an orderly fashion to one or more SIPC-protected brokerage firms.' ''). *See also* Investor Alert, *If a Brokerage Firm Closes Its Doors,* available at *https://www.finra.org/investors/alerts/if-brokerage-firm-closes-its-doors.*

disclosing a firm's designation as a Restricted Firm.'' [102]

FINRA also addressed the potential impact of BrokerCheck disclosure of Restricted Firm designations on the employees of such member firms, stating that it anticipated an indirect effect on individuals associated with Restricted Firms.[103] For example, employees with clean disciplinary records who work for a currently designated Restricted Firm, or a member firm that an employee anticipates may soon be designated as a Restricted Firm, may be incentivized to leave.[104] However, FINRA stated that the extent to which disclosure of Restricted Firm designations on BrokerCheck would impact future employment prospects of those firms' registered persons, including those with relevant disclosures, ''is expected to be limited,'' [105] particularly as ''none of the Rule 4111 metrics are based on an employee's prior associations with Restricted Firms.'' [106] Moreover, FINRA stated that prospective firms likely already consider the disclosure history of individual registered persons seeking new employment, ''including in determining if the individual's disclosures impact the firm's Rule 4111 metrics,'' because ''most of the underlying events included in the [Rule 4111 metrics] are already [captured] in BrokerCheck.'' [107] FINRA stated that there is ''some possible risk that a person's association or prior association with a Restricted Firm may potentially impact future employment prospects in ways unrelated to Rule 4111,'' but, as discussed above, such risks are ''outweighed by the investor protection benefits of the proposed rule change.'' [108]

The Commission acknowledges commenters' concerns that the proposed rule change could negatively impact Restricted Firms and their financial professionals. To the extent customers avoid using, or leave, a Restricted Firm in response to the disclosure of its Restricted Firm status, the concomitant reduction in revenue generated by that member firm could increase the risk of that member firm's failure, which could negatively impact the remaining customers of the member firm. In addition, the disclosure of a Restricted Firm's status could negatively impact the firm's ability to hire or retain the type of employees likely to help improve the firm sufficiently to remove the designation.

Despite these possibilities, the Commission finds that the proposed rule change reasonably balances the potential negative impact to Restricted Firms and their employees against the benefits to investors of public disclosure of a Restricted Firm's restricted status, and that it would enhance the investor-protection benefits of FINRA Rule 4111. BrokerCheck is designed to provide free public access to detailed information about member firms and their registered representatives, including information about arbitration awards, disciplinary history, and information concerning conditions and restrictions on the firm or individual's operations, such as whether a particular member firm is subject to the Taping Rule. Investors can use this information to help make informed choices about the member firms with which they conduct business. Public disclosure of a Restricted Firm's status on BrokerCheck, as the proposed rule change would provide, would similarly give investors information they could use to research more carefully the operations of a member firm before engaging it; or, for existing customers, it may encourage them to reevaluate their relationship with the firm. In addition, the display of Restricted Firm designation—which would only occur when a member firm is currently designated and not for historical designations—may encourage Restricted Firms to improve internal controls to avoid further potential reputational harm in being re-designated as a Restricted Firm in subsequent years, which would provide investor protection benefits to both customers and potential customers of Restricted Firms.

It is possible that disclosure of a Restricted Firm's status on BrokerCheck may negatively impact that firm by warning away existing and potential customers. And as a consequence, those firms may experience financial hardship or even failure. It is also possible that the proposed rule change would negatively impact employees, or prior employees, of Restricted Firms. However, any potential effect on the firm or their financial professionals of such a designation must be considered in light of the potential benefits to customers and potential customers of having these disclosures made available to them. As commenters indicate, many investors could find the information regarding a Restricted Firm designation, which FINRA expects to apply to a relatively limited number of member firms with significantly higher levels of risk-related disclosures than similarly sized peers and that present a high degree of risk to investors (*i.e.,* according to FINRA, only 1.3% of all member firms as of December 31, 2019, would have been identified as Restricted Firms),[109] material to their decision of whether to engage or remain with the firm. In addition, to the extent the proposed rule change results in the failure of a Restricted Firm, the regulatory regime governing firm failures provides sufficient investor protections to help ensure the orderly winding up of the firm's business and the protection of their customers.[110] In light of this, the Commission finds that FINRA has appropriately balanced the investor protection benefits of the proposed rule change against the potential harm to Restricted Firms and their registered representatives, and that FINRA has reasonably considered the impacts of the proposed rule change as outlined in its economic impact analysis and its response to comments.

Accordingly, for the reasons set forth above, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

E. Recommended Withholding of Disclosure During a FINRA Rule 9561 Expedited Proceeding

As stated above, FINRA Rule 9561 established expedited proceedings providing member firms and former member firms, among other things, an opportunity to challenge any requirements the Department has imposed, including any Restricted Deposit Requirements, by requesting, pursuant to FINRA Rule 9561, a prompt review of its decision in the FINRA Rule 4111 process (''FINRA Rule 9561 expedited proceeding''). Under the proposed rule change, FINRA would prominently disclose a Restricted Firm's

[102] FINRA September 15 Letter at note 13.

[103] *Id.* at 4 (citing Notice, 87 FR at 36553).

[104] *Id.* at 4.

[105] *Id.* at 4–5 (citing Rule 4111 Notice at 78553 and note 62, wherein FINRA asserted that ''the economic impact from Rule 4111 on individuals' employment prospects is expected to be limited to a small proportion of registered persons, specifically those with a significant number of disciplinary and other disclosure events on their records, and that the vast majority of member firms would likely be able to employ most of the individuals seeking employment in the industry, including ones who have some disclosures, without coming close to meeting the Rule 4111 Preliminary Criteria for Identification'').

[106] *Id.* at 5.

[107] *Id.* at 4–5.

[108] *Id.* at 5.

[109] *See* Notice, 87 FR 36553 note 25 (citing SR–FINRA–2020–041, Exhibit 3g).

[110] *See supra* notes 99–101 and accompanying text.

status on BrokerCheck, including while such a challenge is ongoing.[111]

One commenter recommended that FINRA amend the proposed rule change to give member firms and former member firms the opportunity to appeal their Restricted Firm designation through a FINRA Rule 9561 expedited proceeding before disclosing their restricted status.[112] The commenter stated that publishing a Restricted Firm designation prior to completion of the adjudicatory process denies that firm adequate due process.[113] As such, the arrangement ''fails to strike the correct balance between the need for investor protection and the procedural due process rights of the firm.'' [114]

In response, FINRA stated that it proposed disclosing Restricted Firm designations during the pendency of a FINRA Rule 9561 expedited proceeding, because a ''firm's obligations under Rule 4111 are not stayed [during a Rule 9561 expedited proceeding].'' [115] Specifically, FINRA stated ''a designated Restricted Firm will still be required to comply with any conditions and restrictions imposed on the firm and deposit a portion of any Restricted Deposit Requirement.'' [116] FINRA stated that although it appreciates the commenter's suggestion, it continues to believe that the display of any member firm's current designation as a Restricted Firm on BrokerCheck, including during the pendency of a FINRA Rule 9561 expedited proceeding, ''strikes the right balance in support of investor protection.'' [117] For example, FINRA stated that ''[d]isplaying the firm's Restricted Firm status on BrokerCheck while the Rule 9561 expedited proceeding is pending could prompt investors to ask the firm about the firm's status.'' However, in response to the commenter's concerns, FINRA stated that it will work to disclose on BrokerCheck that any firm that is appealing its Restricted Firm designation pursuant to a FINRA Rule 9561 expedited proceeding has a Restricted Firm designation that is ''on appeal.'' [118]

The Commission finds that the proposed rule change to display the current Restricted Firm designations of member firms and former member firms, during the pendency of a FINRA Rule 9561 expedited proceeding is reasonable, and appropriately enhances the investor protection benefits of the proposed rule change. The structure of the FINRA Rule 4111 process is designed such that Restricted Firm designations themselves are not stayed, nor are the concomitant obligations and conditions to which the firms are subject, during a FINRA Rule 9561 expedited proceeding. Therefore, it is reasonable for FINRA to require publication of the firm's active Restricted Firm designation on BrokerCheck in light of the important investor protection benefits such disclosure brings, and for FINRA to not delay such disclosure solely because the designated firm has requested a hearing (which may or may not be successful) pursuant to the FINRA Rule 9561 expedited proceeding provisions.[119] Accordingly, for the reasons set forth above, the Commission finds that the proposed rule change is designed to protect investors and the public interest.

F. The Disclosure of Restricted Status Is Redundant

As stated above, FINRA Rule 4111 authorizes FINRA to designate as Restricted Firms those member firms that present a high degree of risk to the investing public, based on numeric thresholds of firm-level and individual-level disclosure events.[120] One commenter stated that the proposed rule change is unnecessary because information about the events giving rise to the Restricted Firm designation are already publicly available on BrokerCheck.[121] The commenter pointed out that disclosures about member firms' and former member firms' history of litigation, regulatory actions, and financial disclosures (among other things) are reported on Form BD, which information in turn appears on BrokerCheck.[122] The commenter stated that, similarly, information about firms' registered representatives is reported on Forms U4 and U5, which information is also available on BrokerCheck.[123] Because investors already have access to the relevant data forming the basis of a Restricted Firm designation, this commenter stated the proposed rule change would result in redundant disclosure.[124]

FINRA disagreed with the assertion that such proposed disclosure would be redundant.[125] FINRA stated that although Restricted Firm designations stem from events already disclosed on BrokerCheck, including certain events that are reported on Registration Forms, ''the disclosure of a firm's designation as a Restricted Firm would provide additional information to investors.'' [126] Specifically, this information ''would convey [to investors] that FINRA has designated the firm as a Restricted Firm after determining that the firm meets the Preliminary Criteria for Identification, conducting an initial evaluation, and having a consultation with the member; that the firm has significantly higher levels of risk-related disclosures than other similarly sized peers and presents a high degree of risk to investors; and that the firm may be subject to a 'Restricted Deposit Requirement' and other conditions or restrictions.'' [127] FINRA asserted that this information would be new for investors, as it is not information that could be ''gather[ed] today from reviewing a firm's BrokerCheck report.'' [128]

The Commission finds that the proposed rule change requiring the disclosure of Restricted Firm designations on BrokerCheck would not be redundant of existing disclosures and would therefore provide additional information to investors and investor protection benefits. While the FINRA Rule 4111 metrics are comprised of disclosure events that are required to be reported on Registration Forms, FINRA's designation of a member firm or former member firm as a Restricted Firm follows an extensive FINRA Rule 4111 process that includes FINRA's own evaluation of the events, a consultation with the member firm in question, and an independent decision by FINRA's Department of Member Supervision to

[111] Proposed FINRA Rule 8312(b)(2)(I) would require the disclosure on BrokerCheck of information as to whether a particular current or former member is currently designated as a Restricted Firm pursuant to FINRA Rules 4111 and 9561. This would include the obligation to disclose while a FINRA Rule 9561 expedited proceeding to review the Department's decision is pending, because a decision that designates a firm as a Restricted Firm will not be stayed during a FINRA Rule 9561 expedited proceeding. *See* Notice, 87 FR 36552; *see also* FINRA Rule 9561(a)(4) (Effectiveness of the Rule 4111 Requirements).

[112] *See* Cetera Letter at 3.

[113] *See id.*

[114] *Id.* (stating that ''[g]iven the potential for serious consequences upon disclosure of Restricted Firm status, it seems only fair that any such disclosure should be delayed until the entire adjudicatory process has been completed'').

[115] FINRA September 15 Letter at 9 (citing Notice at 36552 and note 15).

[116] *Id.*

[117] *Id.*

[118] *Id.*

[119] The Commission notes that FINRA's commitment to work to enhance its display of Restricted Firm designations on BrokerCheck to convey to investors when member firms and former member firms have requested a hearing pursuant to FINRA Rule 9561 that such a designation is on appeal would make additional information available to investors, who may benefit from knowing that a firm is challenging its designation.

[120] *See* FINRA Rule 4111(i)(11).

[121] *See* CoastalOne Letter at 2.

[122] *See id.*

[123] *See id.*

[124] *See id.* at 2–3.

[125] *See* FINRA September 15 Letter at 6.

[126] *Id.*

[127] *Id.*

[128] *Id.*

make the designation in question. Further, the disclosure of Restricted Firm designations also would indicate to investors that the firm may be subject to a Restricted Deposit Requirement and other conditions or restrictions. Therefore, this designation would be new and additive to the array of information currently available to investors. Accordingly, for the reasons set forth above, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act,[129] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

IV. Conclusion

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

As with FINRA's approach to disclosing a member firm's Taping Firm status, the proposed rule change would provide disclosures to investors of information concerning the current status of member firms and former member firms that FINRA believes pose higher risks to the investing public compared to member firms and former member firms of similar sizes. This new category of information, provided in a user-friendly manner, would arm investors with information they could use to more carefully research the background of such firms. The proposed rule change could also incentivize member firms with a significant history of misconduct to change behaviors and activities to reduce risk. As such, the proposed rule change would enhance the investor-protection benefits of FINRA Rule 4111.[130] While the proposed rule change may negatively impact those firms designated as Restricted Firms, as described above, the existing regulatory regime would help mitigate potential harm. Furthermore, FINRA stated that it would revisit the proposed rule change after gaining experience with disclosing Restricted Firm designations on BrokerCheck.

For these reasons, the Commission finds the proposed rule change is designed to protect investors and the public interest.

It is therefore ordered pursuant to Section 19(b)(2) of the Exchange Act[131] that the proposed rule change (SR–FINRA–2022–015), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[132]

Sherry R. Haywood,

Assistant Secretary.

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[129] 15 U.S.C. 78*o*–3(b)(6).

[130] *See* FINRA Rule 4111 Order.

[131] 15 U.S.C. 78s(b)(2).

[132] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96801; File No. SR–NSCC–2023–001]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Clearing Agency Risk Management Framework

February 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 January 30, 2023, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the Clearing Agency Risk Management Framework (''Risk Management Framework'', or ''Framework'') of NSCC and its affiliates, The Depository Trust Company (''DTC'') and Fixed Income Clearing Corporation (''FICC,'' and together with NSCC, the ''CCPs'' and the CCPs together with DTC, the ''Clearing Agencies'').[5] Specifically, the proposed rule change would amend the Risk Management Framework to (1) update the description of the dashboards used by the Clearing Agencies as internal performance management tools to measure the effectiveness of their various operations; and (2) clarify and revise the descriptions of certain matters within the Framework and correct errors in those descriptions, as further described below. The proposed changes would update and clarify the Risk Management Framework but do not reflect changes to how the Clearing Agencies comply with the applicable requirements of Rule 17Ad–22(e), as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Clearing Agencies adopted the Risk Management Framework[6] to provide an outline for how each of the Clearing Agencies (i) maintains a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities; (ii) comprehensively manages legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by it; (iii) identifies, monitors, and manages risks related to links it establishes with one or more clearing agencies, financial market utilities, or trading markets; (iv) meets the requirements of its participants and the markets it serves efficiently and effectively; (v) uses, or at a minimum accommodates, relevant internationally accepted communication

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] *See* Securities Exchange Act Release Nos. 81635 (September 15, 2017), 82 FR 44224 (September 21, 2017) (File Nos. SR–DTC–2017–013; SR–FICC–2017–016; SR–NSCC–2017–012) (''Initial Filing'') and Securities Exchange Act Release No. 89271 (July 09, 2020), 85 FR 42933 (July 15, 2020) (File No. SR–NSCC–2020–012); Securities Exchange Act Release No. 89269 (July 09, 2020), 85 FR 42954 (July 15, 2020) (File No. SR–DTC–2020–009); and Securities Exchange Act Release No. 89270 (July 09, 2020), 85 FR 42927 (July 15, 2020) (File No. SR–FICC–2020–007) (together with the Initial Filing, the ''Framework Filings'')

[6] *Supra* note 5.

procedures and standards in order to facilitate efficient payment, clearing and settlement; and (vi) publicly discloses certain information, including market data. In this way, the Risk Management Framework currently supports the Clearing Agencies' compliance with Rules 17Ad–22(e)(1), (3), (20), (21), (22) and (23) of the Standards,[7] as described in the Framework Filings. In addition to setting forth the manner in which each of the Clearing Agencies addresses these requirements, the Risk Management Framework also contains a section titled ''Framework Ownership and Change Management'' that, among other matters, describes the Framework ownership and the required governance process for review and approval of changes to the Framework. In connection with the annual review and approval of the Framework by the Board of Directors of each of NSCC, DTC and FICC (each a ''Board'' and collectively, the ''Boards''), the Clearing Agencies are proposing to make certain revisions to the Framework.

First, the proposed changes would update the Risk Management Framework to reflect a change to the dashboards used by the Clearing Agencies as internal performance management tools to measure the effectiveness of various aspects of their operations, as described in greater detail below.

The proposed changes would also clarify and enhance the descriptions in the Risk Management Framework and correct errors in those descriptions by, for example, (1) enhancing the description of the Clearing Agencies processes for management of certain risks through risk tolerance statements; (2) clarifying the description of the ''Three Lines of Defense,'' including but not limited to updating the descriptions of the ''first line of defense,'' the ''second line of defense,'' and the ''third line of defense,'' (3) clarifying the definition of Rules; (4) enhancing the description of the purpose and approval process of ''Risk Management Frameworks;'' (5) updating the name of the Operational Risk Management group and the Third Party Risk function.

Finally, the proposed changes would capitalize terms that mistakenly were not previously capitalized but refer to a specific term, remove an unnecessary citation and make certain grammatical changes.

[7] 17 CFR 240.17Ad–22(e)(1), (3), (20), (21), (22) and (23).

i. Proposed Amendments To Update the Description of Performance Measurement Tools

The proposed changes would update the Risk Management Framework to reflect a recent change to the dashboards that are used by the Clearing Agencies as internal performance management tools and address their compliance with the requirements of Rule 17Ad–22(e)(21).[8] Section 4.3 of the Framework identifies certain processes implemented by the Clearing Agencies to be efficient and effective in meeting the requirements of their respective participants and the markets they serve.[9] This list of processes is not meant to be exhaustive, and the Clearing Agencies may use other methods to achieve their goals and meet their regulatory requirements. The proposed change would update the Framework to remove reference to a process that was previously used by the Clearing Agencies to monitor their performance and the review standards for such processes.

The Clearing Agencies previously used the DTCC Core Balanced Scoreboard (''BBS'') to provide insight into the effectiveness of their various operations in meeting the needs of their participants and the markets they serve. The Clearing Agencies have eliminated the BBS and now utilize multiple other dashboards to measure the outcomes that were previously measured by the BBS. The elimination of the BBS is not a material change in how the Clearing Agencies approach risk management, as they are simply using other methods to continue to comply with the requirements of Rule 17Ad–22(e)(21).[10] The use of multiple dashboards allows for a more holistic view of the performance of the Clearing Agencies and their subsidiaries. The proposed change would also enhance the descriptions of these processes by describing the annual review of this process and how results are tracked.

ii. Proposed Amendment To Clarify, Enhance, and Correct Descriptions in the Framework

The proposed changes would improve the clarity and comprehensiveness of the descriptions of certain matters within the Risk Management Framework and correct grammatical errors in certain descriptions. Some specific examples of such proposed changes include:

[8] 17 CFR 240.17Ad–22(e)(21).

[9] *Id.*

[10] *Supra* note 8.

1. Proposed Change To Describe the Clearing Agencies' Assessment and Review of Risk Tolerance Statements

Section 3 of the Framework describes management's responsibility to establish risk tolerance statements for the range of risks that arise in or are borne by the Clearing Agencies. Section 3 also outlines the review and approval process for such risk tolerance statements and the Clearing Agencies' performance relative to those statements. The proposed change would clarify that the Clearing Agencies' performance relative to those risk tolerance statements is assessed quarterly and is shared with senior management and the Board Risk Committees of the Clearing Agencies.

2. Proposed Changes To Clarify the Description of the ''Three Lines of Defense''

Section 3.1 of the Framework describes the ''three lines of defense'' approach adopted by each of the Clearing Agencies for identifying, assessing, measuring, monitoring, mitigating, and reporting the risks that arise in or are borne by it. A proposed change would remove the last sentence of this Section, which states, ''While the Framework provides a general description of the Three Lines of Defense approach for risk management, the Three Lines of Defense approach may be used by the Clearing Agencies for managing specific risks, for example operational risk, which is addressed in the Operational Risk Management Framework (see Section 3 below)'' This sentence is unnecessarily duplicative of the statements in Section 3.3.3 of the Framework which provides details of the various frameworks, separate and apart from this Framework, used by the Clearing Agencies to manage specific risks and, therefore, may cause confusion to a reader. The deletion of the sentence would resolve any such possible confusion, thereby clarifying the entirety of Section 3. The Clearing Agencies are also proposing a change to enhance the examples provided in Section 3.1.1 to illustrate the Clearing Agency Business/Support Areas role as the first line of defense in managing risk by adding two additional examples: (a) ''Defining and monitoring business risk metrics applicable to their function;'' and (b) ''Clearly understanding and reporting the residual, unmitigated risk that is acceptable to their function.'' Additionally, a proposed change to Section 3.1.3 would update the description of the responsibilities of internal audit to be in line with the internal audit charter.

3. Proposed Change To Clarify the Definition of ''Rules''

Section 3.3.2 of the Framework includes a defined term for the ''Rules'' of the Clearing Agencies. The proposed change would clarify that the ''Rules'' referred to for purposes of this Framework are filed with the Commission. Therefore, the proposed change would update the definition of Rules for clarification purposes and would not substantively change the definition.

4. Enhance the Description of the Purpose and Approval Process of ''Risk Management Frameworks''

Section 3.3.3 describes the system of frameworks, maintained by the Clearing Agencies, separate and apart from this Framework to manage a range of risks. This Section outlines in greater detail certain of these risk management frameworks and their purpose. The proposed changes to this Section 3.3.3 would enhance the description of one of these frameworks; clarify that such frameworks are in support of this Framework; and clarify that such frameworks may be approved by an applicable Board committee as delegated by the Boards, pursuant to the Document Standards described in this Framework.

5. Stating a Change to the Name of the Vendor Risk Management Group and to the Third-Party Risk Function Group

The Framework describes the role of the Operational Risk Management Group as the group that manages incidents, and the Third-Party Management Function manages third party risks to the Clearing Agencies. The proposed change would update the Framework to reflect a change in the name of these two groups. The Operational Risk Management Group is now referred to as Operational and Technology Risk and the Third-Party Risk Management group is now referred to as Third Party Risk. This proposed change would reflect a recent organizational name change.

6. Proposed Changes To Capitalize Defined Terms and Correct Grammatical and Formatting Errors, Removal of Citation

These proposed changes would fix grammatical errors and capitalize terms that should be defined terms in the Framework or removes inconsistent wording. Some of these changes include: (i) make IOSCO a defined term in footnote 2 for clarification purposes; (ii) change the word ''settlement'' to ''settling'' in Section 4.2 for consistency; (3) remove the words ''and Liquidity Providers'' from the heading ''*Risks Related to Investment Counterparties and Liquidity Providers*'' in Section 4.2.1 as the paragraph does not discuss liquidity providers and (4) deletion of footnote 21 as unnecessary.

The proposed rule change would make additional immaterial edits to the Framework that do not alter how the Clearing Agencies comply with the applicable requirements of Rule 17Ad–22(e).

2. Statutory Basis

The Clearing Agencies believe that the proposed changes are consistent with Section 17A(b)(3)(F) of the Act [11] for the reasons described below. Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[12] The proposed changes would (1) update the Risk Management Framework to remove reference to the BBS and include a description of the governance around the dashboards used by the Clearing Agencies to measure the effectiveness of their operations, and (2) clarify the descriptions of certain matters within the Framework to improve comprehensiveness and correct errors, as described above. By creating clearer, updated descriptions and correcting errors, the Clearing Agencies believe that the proposed changes would make the Risk Management Framework more effective in providing an overview of the important risk management activities of the Clearing Agencies, as described therein.

As described in the Framework Filings, the risk management functions described in the Risk Management Framework allow the Clearing Agencies to continue to promote the prompt and accurate clearance and settlement of securities transactions and continue to assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible notwithstanding the default of a member of an affiliated family. The proposed changes to improve the clarity and accuracy of the descriptions of risk management functions within the Framework would assist the Clearing Agencies in carrying out these risk management functions. Therefore, the Clearing Agencies believe these proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act.[13]

(B) Clearing Agency's Statement on Burden on Competition

The Clearing Agencies do not believe that the proposed changes to the Framework described above would have any impact, or impose any burden, on competition. As described above, the proposed rule change would improve the comprehensiveness of the Framework by creating clearer, updated descriptions and correcting errors, thereby making the Risk Management Framework more effective in providing an overview of the important risk management activities of the Clearing Agencies. As such, the Clearing Agencies do not believe that the proposed rule change would have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at *https://www.sec.gov/regulatory-actions/how-to-submitcomments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

NSCC reserves the right not to respond to any comments 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

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] *Id.*

[13] *Id.*

19(b)(3)(A)[14] of the Act and paragraph (f)[15] of Rule 19b–4 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.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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–NSCC–2023–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–NSCC–2023–001. 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 NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–NSCC–2023–001 and should be submitted on or before March 2, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–02711 Filed 2–8–23; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96797; File No. SR–OCC–2022–012]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change Concerning the Options Clearing Corporation's Collateral Haircuts and Standards for Clearing Banks and Letters of Credit

February 3, 2023.

On December 5, 2022, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2022–012 (''Proposed Rule Change'') pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder[2] to change rules, policies, and procedures regarding collateral haircuts, minimum standards for clearing banks and letter-of-credit issuers, and concentration limits for letters of credit.[3] The Proposed Rule Change was published for public comment in the **Federal Register** on December 23, 2022.[4] The Commission has received comments regarding the proposal in the Proposed Rule Change.[5]

Section 19(b)(2) of the Exchange Act[6] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the Notice of Filing is February 6, 2023. The Commission is extending this 45-day time period.

In order to provide the Commission with sufficient time to consider the Proposed Rule Change, the Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change.

Accordingly, the Commission, pursuant to section 19(b)(2) of the Exchange Act,[7] designates March 23, 2023 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–OCC–2022–012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–02715 Filed 2–8–23; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, 87 FR at 79015.

[4] Securities Exchange Act Release No. 96533 (Dec. 19, 2022), 87 FR 79015 (Dec. 23, 2022) (File No. SR–OCC–2022–012) (''Notice of Filing'').

[5] Comments on the Proposed Rule Change are available at *https://www.sec.gov/comments/sr-occ-2022-012/srocc2022012.htm.*

[6] 15 U.S.C. 78s(b)(2).

[7] *Id.*

[8] 17 CFR 200.30–3(a)(94).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34824; File No. 812–15309]

Kennedy Lewis Management LP, et al.

February 6, 2023.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain

business development companies and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: Kennedy Lewis Management LP, Kennedy Lewis Capital Company, Kennedy Lewis Capital Holdings LLC, Kennedy Lewis Capital Partners Master Fund II LP, and Kennedy Lewis Capital Partners Master Fund III LP.

FILING DATES: The application was filed on February 16, 2022, and amended on October 27, 2022 and December 30, 2022.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on March 3, 2023, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: *anthony.pasqua@klimllc.com.*

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, or Lisa Reid Ragen, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' second amended and restated application, dated December 30, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, *http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–02800 Filed 2–8–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96799; File No. SR–DTC–2023–001]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Clearing Agency Risk Management Framework

February 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 January 30, 2023, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the Clearing Agency Risk Management Framework (''Risk Management Framework'', or ''Framework'') of DTC and its affiliates, Fixed Income Clearing Corporation (''FICC'') and National Securities Clearing Corporation (''NSCC,'' and together with FICC, the ''CCPs'' and the CCPs together with DTC, the ''Clearing Agencies'').[5] Specifically, the proposed rule change would amend the Risk Management Framework to (1) update the description of the dashboards used by the Clearing Agencies as internal performance management tools to measure the effectiveness of their various operations; and (2) clarify and revise the descriptions of certain matters within the Framework and correct errors in those descriptions, as further described below. The proposed changes would update and clarify the Risk Management Framework but do not reflect changes to how the Clearing Agencies comply with the applicable requirements of Rule 17Ad–22(e), as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Clearing Agencies adopted the Risk Management Framework [6] to provide an outline for how each of the Clearing Agencies (i) maintains a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities; (ii) comprehensively manages legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by it; (iii) identifies, monitors, and manages risks related to links it establishes with one or more clearing agencies, financial market utilities, or trading markets; (iv) meets the requirements of its participants and the markets it serves efficiently and effectively; (v) uses, or at a minimum accommodates, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing and settlement; and (vi) publicly discloses certain information, including market data. In this way, the Risk Management Framework currently supports the Clearing Agencies' compliance with Rules 17Ad–22(e)(1), (3), (20), (21), (22)

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] *See* Securities Exchange Act Release Nos. 81635 (September 15, 2017), 82 FR 44224 (September 21, 2017) (File Nos. SR–DTC–2017–013; SR–FICC–2017–016; SR–NSCC–2017–012) (''Initial Filing'') and Securities Exchange Act Release No. 89271 (July 09, 2020), 85 FR 42933 (July 15, 2020) (File No. SR–NSCC–2020–012); Securities Exchange Act Release No. 89269 (July 09, 2020), 85 FR 42954 (July 15, 2020) (File No. SR–DTC–2020–009); and Securities Exchange Act Release No. 89270 (July 09, 2020), 85 FR 42927 (July 15, 2020) (File No. SR–FICC–2020–007) (together with the Initial Filing, the ''Framework Filings'').

[6] *Supra* note 5.

and (23) of the Standards,[7] as described in the Framework Filings. In addition to setting forth the manner in which each of the Clearing Agencies addresses these requirements, the Risk Management Framework also contains a section titled ''Framework Ownership and Change Management'' that, among other matters, describes the Framework ownership and the required governance process for review and approval of changes to the Framework. In connection with the annual review and approval of the Framework by the Board of Directors of each of NSCC, DTC and FICC (each a ''Board'' and collectively, the ''Boards''), the Clearing Agencies are proposing to make certain revisions to the Framework.

First, the proposed changes would update the Risk Management Framework to reflect a change to the dashboards used by the Clearing Agencies as internal performance management tools to measure the effectiveness of various aspects of their operations, as described in greater detail below.

The proposed changes would also clarify and enhance the descriptions in the Risk Management Framework and correct errors in those descriptions by, for example, (1) enhancing the description of the Clearing Agencies processes for management of certain risks through risk tolerance statements; (2) clarifying the description of the ''Three Lines of Defense,'' including but not limited to updating the descriptions of the ''first line of defense,'' the ''second line of defense,'' and the ''third line of defense,'' (3) clarifying the definition of Rules; (4) enhancing the description of the purpose and approval process of ''Risk Management Frameworks;'' (5) updating the name of the Operational Risk Management group and the Third Party Risk function.

Finally, the proposed changes would capitalize terms that mistakenly were not previously capitalized but refer to a specific term, remove an unnecessary citation and make certain grammatical changes.

i. Proposed Amendments To Update the Description of Performance Measurement Tools

The proposed changes would update the Risk Management Framework to reflect a recent change to the dashboards that are used by the Clearing Agencies as internal performance management tools and address their compliance with the requirements of Rule 17Ad–22(e)(21).[8] Section 4.3 of the Framework identifies certain processes implemented by the Clearing Agencies to be efficient and effective in meeting the requirements of their respective participants and the markets they serve.[9] This list of processes is not meant to be exhaustive, and the Clearing Agencies may use other methods to achieve their goals and meet their regulatory requirements. The proposed change would update the Framework to remove reference to a process that was previously used by the Clearing Agencies to monitor their performance and the review standards for such processes.

The Clearing Agencies previously used the DTCC Core Balanced Scoreboard (''BBS'') to provide insight into the effectiveness of their various operations in meeting the needs of their participants and the markets they serve. The Clearing Agencies have eliminated the BBS and now utilize multiple other dashboards to measure the outcomes that were previously measured by the BBS. The elimination of the BBS is not a material change in how the Clearing Agencies approach risk management, as they are simply using other methods to continue to comply with the requirements of Rule 17Ad–22(e)(21).[10] The use of multiple dashboards allows for a more holistic view of the performance of the Clearing Agencies and their subsidiaries. The proposed change would also enhance the descriptions of these processes by describing the annual review of this process and how results are tracked.

ii. Proposed Amendment To Clarify, Enhance, and Correct Descriptions in the Framework

The proposed changes would improve the clarity and comprehensiveness of the descriptions of certain matters within the Risk Management Framework and correct grammatical errors in certain descriptions. Some specific examples of such proposed changes include:

1. Proposed Change To Describe the Clearing Agencies' Assessment and Review of Risk Tolerance Statements

Section 3 of the Framework describes management's responsibility to establish risk tolerance statements for the range of risks that arise in or are borne by the Clearing Agencies. Section 3 also outlines the review and approval process for such risk tolerance statements and the Clearing Agencies' performance relative to those statements. The proposed change would clarify that the Clearing Agencies' performance relative to those risk tolerance statements is assessed quarterly and is shared with senior management and the Board Risk Committees of the Clearing Agencies.

2. Proposed Changes To Clarify the Description of the ''Three Lines of Defense''

Section 3.1 of the Framework describes the ''three lines of defense'' approach adopted by each of the Clearing Agencies for identifying, assessing, measuring, monitoring, mitigating, and reporting the risks that arise in or are borne by it. A proposed change would remove the last sentence of this Section, which states, ''While the Framework provides a general description of the Three Lines of Defense approach for risk management, the Three Lines of Defense approach may be used by the Clearing Agencies for managing specific risks, for example operational risk, which is addressed in the Operational Risk Management Framework (see Section 3 below)'' This sentence is unnecessarily duplicative of the statements in Section 3.3.3 of the Framework which provides details of the various frameworks, separate and apart from this Framework, used by the Clearing Agencies to manage specific risks and, therefore, may cause confusion to a reader. The deletion of the sentence would resolve any such possible confusion, thereby clarifying the entirety of Section 3. The Clearing Agencies are also proposing a change to enhance the examples provided in Section 3.1.1 to illustrate the Clearing Agency Business/Support Areas role as the first line of defense in managing risk by adding two additional examples: (a) ''Defining and monitoring business risk metrics applicable to their function;'' and (b) ''Clearly understanding and reporting the residual, unmitigated risk that is acceptable to their function.'' Additionally, a proposed change to Section 3.1.3 would update the description of the responsibilities of internal audit to be in line with the internal audit charter.

3. Proposed Change To Clarify the Definition of ''Rules''

Section 3.3.2 of the Framework includes a defined term for the ''Rules'' of the Clearing Agencies. The proposed change would clarify that the ''Rules'' referred to for purposes of this Framework are filed with the Commission. Therefore, the proposed change would update the definition of Rules for clarification purposes and

[7] 17 CFR 240.17Ad–22(e)(1), (3), (20), (21), (22) and (23).

[8] 17 CFR 240.17Ad–22(e)(21).

[9] *Id.*

[10] *Supra* note 8.

would not substantively change the definition.

4. Enhance the Description of the Purpose and Approval Process of ''Risk Management Frameworks''

Section 3.3.3 describes the system of frameworks, maintained by the Clearing Agencies, separate and apart from this Framework to manage a range of risks. This Section outlines in greater detail certain of these risk management frameworks and their purpose. The proposed changes to this Section 3.3.3 would enhance the description of one of these frameworks; clarify that such frameworks are in support of this Framework; and clarify that such frameworks may be approved by an applicable Board committee as delegated by the Boards, pursuant to the Document Standards described in this Framework.

5. Stating a Change to the Name of the Vendor Risk Management Group and to the Third-Party Risk Function Group

The Framework describes the role of the Operational Risk Management Group as the group that manages incidents, and the Third-Party Management Function manages third party risks to the Clearing Agencies. The proposed change would update the Framework to reflect a change in the name of these two groups. The Operational Risk Management Group is now referred to as Operational and Technology Risk and the Third-Party Risk Management group is now referred to as Third Party Risk. This proposed change would reflect a recent organizational name change.

6. Proposed Changes To Capitalize Defined Terms and Correct Grammatical and Formatting Errors, Removal of Citation

These proposed changes would fix grammatical errors and capitalize terms that should be defined terms in the Framework or removes inconsistent wording. Some of these changes include: (i) make IOSCO a defined term in footnote 2 for clarification purposes; (ii) change the word ''settlement'' to ''settling'' in Section 4.2 for consistency; (3) remove the words ''and Liquidity Providers'' from the heading ''*Risks Related to Investment Counterparties and Liquidity Providers*'' in Section 4.2.1 as the paragraph does not discuss liquidity providers and (4) deletion of footnote 21 as unnecessary.

The proposed rule change would make additional immaterial edits to the Framework that do not alter how the Clearing Agencies comply with the applicable requirements of Rule 17Ad–22(e).

2. Statutory Basis

The Clearing Agencies believe that the proposed changes are consistent with section 17A(b)(3)(F) of the Act [11] for the reasons described below. Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[12] The proposed changes would (1) update the Risk Management Framework to remove reference to the BBS and include a description of the governance around the dashboards used by the Clearing Agencies to measure the effectiveness of their operations, and (2) clarify the descriptions of certain matters within the Framework to improve comprehensiveness and correct errors, as described above. By creating clearer, updated descriptions and correcting errors, the Clearing Agencies believe that the proposed changes would make the Risk Management Framework more effective in providing an overview of the important risk management activities of the Clearing Agencies, as described therein.

As described in the Framework Filings, the risk management functions described in the Risk Management Framework allow the Clearing Agencies to continue to promote the prompt and accurate clearance and settlement of securities transactions and continue to assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible notwithstanding the default of a member of an affiliated family. The proposed changes to improve the clarity and accuracy of the descriptions of risk management functions within the Framework would assist the Clearing Agencies in carrying out these risk management functions. Therefore, the Clearing Agencies believe these proposed changes are consistent with the requirements of section 17A(b)(3)(F) of the Act.[13]

(B) Clearing Agency's Statement on Burden on Competition

The Clearing Agencies do not believe that the proposed changes to the Framework described above would have any impact, or impose any burden, on competition. As described above, the proposed rule change would improve the comprehensiveness of the Framework by creating clearer, updated descriptions and correcting errors, thereby making the Risk Management Framework more effective in providing an overview of the important risk management activities of the Clearing Agencies. As such, the Clearing Agencies do not believe that the proposed rule change would have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, *available at https://www.sec.gov/regulatory-actions/how-to-submitcomments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

DTC reserves the right not to respond to any comments 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) [14] of the Act and paragraph (f) [15] of Rule 19b–4 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,

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] *Id.*

[13] *Id.*

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f).

or otherwise in furtherance of the purposes of the Act.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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–DTC–2023–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–DTC–2023–001. 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 DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–DTC–2023–001 and should be submitted on or before March 2, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–02716 Filed 2–8–23; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Meeting of the Interagency Task Force on Veterans Small Business Development

AGENCY: Small Business Administration (SBA).

ACTION: Notice of open federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the date, time, and agenda for the next meeting of the Interagency Task Force on Veterans Small Business Development (IATF).

DATES: Wednesday, March 1, 2023, from 1:00 p.m. to 3:00 p.m. EST.

ADDRESSES: The meeting will be held virtually via Microsoft Teams.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; however advance notice of attendance is strongly encouraged. To RSVP and confirm attendance, the public should email *veteransbusiness@sba.gov* with subject line—''RSVP for March 1, 2023, IATF Public Meeting.'' To submit a written comment, individuals should email *veteransbusiness@sba.gov* with subject line—''Response for March 1, 2023, IATF Public Meeting'' no later than February 17, 2023, or contact Timothy Green, Deputy Associate Administrator, Office of Veterans Business Development (OVBD) at (202) 205–6773. Comments received in advanced will be addressed as time allows during the public comment period. All other submitted comments will be included in the meeting record. During the live meeting, those who wish to comment will be able to do so during the public comment period. Participants can join the meeting via computer at this link: *https://bit.ly/IATF-March23* or by phone. Call in (audio only): Dial: 202–765–1264: Phone Conference ID: 953 121 976# Special accommodation requests should be directed to OVBD at (202) 205–6773 or *veteransbusiness@sba.gov.* All applicable documents will be posted on the IATF website prior to the meeting: *https://www.sba.gov/page/interagency-task-force-veterans-small-business-development.* For more information on veteran-owned small business programs, please visit *www.sba.gov/ovbd.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Interagency Task Force on Veterans Small Business Development (IAFT). The IATF is established pursuant to Executive Order 13540 to coordinate the efforts of Federal agencies to improve capital, business development opportunities, and pre-established federal contracting goals for small business concerns owned and controlled by veterans and service-disabled veterans. The purpose of this meeting is to discuss efforts that support veteran-owned small businesses, updates on past and current events, and the IATF's objectives for fiscal year 2023.

Dated: February 2, 2023.

Andrienne Johnson,

Committee Manager Officer.

[FR Doc. 2023–02759 Filed 2–8–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Meeting of the Advisory Committee on Veterans Business Affairs

AGENCY: Small Business Administration (SBA).

ACTION: Notice of open federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the date, time, and agenda for a meeting of the Advisory Committee on Veterans Business Affairs (ACVBA).

DATES: Thursday, March 2, 2023, from 9:00 a.m. to 1:00 p.m. EST.

ADDRESSES: Due to the coronavirus pandemic, the meeting will be held via Microsoft Teams using a call-in number listed below.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; however advance notice of attendance is strongly encouraged. To RSVP and confirm attendance, the general public should email *veteransbusiness@sba.gov* with subject line—''RSVP for March 2, 2023, ACVBA Public Meeting.'' To submit a written comment, individuals should email *veteransbusiness@sba.gov* with subject line—''Response for March 2, 2023, ACVBA Public Meeting'' no later than February 17, 2023, or contact Timothy Green, Deputy Associate Administrator, Office of Veterans Business Development (OVBD) at (202) 205–6773. Comments received in

advanced will be addressed as time allows during the public comment period. All other submitted comments will be included in the meeting record. During the live meeting, those who wish to comment will be able to do so during the public comment period.

Participants can join the meeting via computer *https://bit.ly/ACVBA-March23* or by phone. Call in (audio only): Dial: 202–765–1264: Phone Conference 115 439 757#.

Special accommodation requests should be directed to OVBD at (202) 205–6773 or *veteransbusiness@sba.gov.* All applicable documents will be posted on the ACVBA website prior to the meeting: *https://www.sba.gov/page/advisory-committee-veterans-business-affairs.* For more information on veteran-owned small business programs, please visit *www.sba.gov/ovbd.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Advisory Committee on Veterans Business Affairs. The ACVBA is established pursuant to 15 U.S.C. 657(b) note and serves as an independent source of advice and policy. The purpose of this meeting is to discuss efforts that support veteran-owned small businesses, updates on past and current events, and the ACVBA's objectives for fiscal year 2023.

Dated: February 2, 2023.

Andrienne Johnson,

Committee Manager Officer.

[FR Doc. 2023–02758 Filed 2–8–23; 8:45 am]

BILLING CODE P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Approvals by Rule for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: January 1–31, 2023.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and (f) for the time period specified above.

Water Source Approval—Issued Under 18 CFR 806.22(f):

1. BKV Operating, LLC; Pad ID: Mirabelli Pad 1–1H; ABR–201008138.R2; Washington Township, Wyoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: January 18, 2023.

2. Blackhill Energy LLC; Pad ID: TYLER Pad; ABR–201008153.R2; Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: January 18, 2023.

3. Chesapeake Appalachia, L.L.C.; Pad ID: Phillips; ABR–201010050.R2; Elkland Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: January 18, 2023.

4. Coterra Energy Inc.; Pad ID: SmithR P4; ABR–202301001; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: January 18, 2023.

5. Pennsylvania General Energy Company, L.L.C.; Pad ID: COP Tract 726 Pad D; ABR–202301004; Plunketts Creek Township, Lycoming County, Pa.; Consumptive Use of Up to 4.5000 mgd; Approval Date: January 18, 2023.

6. S.T.L. Resources, LLC; Pad ID: Bergey 1; ABR–201009056.R2; Gaines Township, Tioga County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: January 18, 2023.

7. S.T.L. Resources, LLC; Pad ID: Marshlands H. Bergey Unit #1; ABR–20091230.R2; Gaines Township, Tioga County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: January 18, 2023.

8. S.T.L. Resources, LLC; Pad ID: Paul 906 808 Pad; ABR–202301002; West Branch Township, Potter County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: January 18, 2023.

9. S.T.L. Resources, LLC; Pad ID: Thomas 808 Pad; ABR–202301003; Elk Township, Tioga County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: January 18, 2023.

10. Blackhill Energy LLC; Pad ID: GRIPPIN A Pad; ABR–201210015.R2; Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: January 23, 2023.

11. Blackhill Energy LLC; Pad ID: KINGSLY E Pad; ABR–201210016.R2; Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: January 23, 2023.

12. Chesapeake Appalachia, L.L.C.; Pad ID: Gemm; ABR–201010049.R2; Litchfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: January 23, 2023.

13. Chesapeake Appalachia, L.L.C.; Pad ID: Grant; ABR–201010051.R2; Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: January 23, 2023.

14. Chesapeake Appalachia, L.L.C.; Pad ID: Juser; ABR–201010065.R2; Rush Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: January 23, 2023.

15. Chesapeake Appalachia, L.L.C.; Pad ID: Mehalick Drilling Pad; ABR–201210018.R2; Cherry Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: January 23, 2023.

16. Chesapeake Appalachia, L.L.C.; Pad ID: Tague West Drilling Pad; ABR–201210012.R2; Lemon Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: January 23, 2023.

17. Chesapeake Appalachia, L.L.C.; Pad ID: Teeter Drilling Pad; ABR–201210013.R2; Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: January 23, 2023.

18. Repsol Oil & Gas USA, LLC; Pad ID: UPHAM (05 129) R; ABR–201010032.R2; Pike Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: January 23, 2023.

19. Seneca Resources Company, LLC; Pad ID: Zimmer 586; ABR–201010042.R2; Covington Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: January 23, 2023.

20. Chesapeake Appalachia, L.L.C.; Pad ID: Crystal; ABR–201011009.R2; North Towanda Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: January 25, 2023.

21. Chesapeake Appalachia, L.L.C.; Pad ID: Drake; ABR–201010066.R2; Litchfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: January 25, 2023.

22. Chesapeake Appalachia, L.L.C.; Pad ID: Gary; ABR–201012019.R2; Rush Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: January 25, 2023.

23. Chesapeake Appalachia, L.L.C.; Pad ID: Shores; ABR–201010064.R2; Sheshequin Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: January 25, 2023.

24. Repsol Oil & Gas USA, LLC; Pad ID: HARVEY (05 073) M; ABR–

201011031.R2; Orwell Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: January 25, 2023.

25. Repsol Oil & Gas USA, LLC; Pad ID: NEVILLE (05 028) V; ABR–201011033.R2; Warren Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: January 25, 2023.

26. Seneca Resources Company, LLC; Pad ID: SGL 90C Pad; ABR–201011024.R2; Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: January 25, 2023.

27. SWN Production Company, LLC; Pad ID: Bolles South Well Pad; ABR–201210017.R2; Franklin Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: January 25, 2023.

28. Chesapeake Appalachia, L.L.C.; Pad ID: Hartz; ABR–201012039.R2; Ulster Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: January 30, 2023.

29. Chesapeake Appalachia, L.L.C.; Pad ID: Slattery; ABR–201211004.R2; Cherry Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: January 30, 2023.

30. EQT ARO LLC; Pad ID: Ann C Good Pad B; ABR–201011047.R2; Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: January 30, 2023.

31. EQT ARO LLC; Pad ID: Larry's Creek F&G Pad F; ABR–201211006.R2; Mifflin Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: January 30, 2023.

32. Chesapeake Appalachia, L.L.C.; Pad ID: Epler; ABR–201011041.R2; Albany Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: January 31, 2023.

33. Chesapeake Appalachia, L.L.C.; Pad ID: Keir; ABR–201012002.R2; Sheshequin Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: January 31, 2023.

34. Chesapeake Appalachia, L.L.C.; Pad ID: Mobear; ABR–201012006.R2; Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: January 31, 2023.

35. Chesapeake Appalachia, L.L.C.; Pad ID: Roeber; ABR–201011037.R2; Wyalusing Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: January 31, 2023.

36. Chesapeake Appalachia, L.L.C.; Pad ID: Roland; ABR–201012021.R2; Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: January 31, 2023.

37. Chesapeake Appalachia, L.L.C.; Pad ID: SGL 289A; ABR–201012015.R2; West Burlington Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: January 31, 2023.

38. Seneca Resources Company, LLC; Pad ID: Nestor 551; ABR–201011040.R2; Delmar Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: January 31, 2023.

Water Source Approval—Issued Under 18 CFR 806.22(e):

1. Kellogg Company—Lancaster Plant; ABR–202301005; East Hempfield Township, Lancaster County, Pa.; Consumptive Use of Up to 0.285 mgd; Approval Date: January 13, 2023.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: February 6, 2023.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2023–02792 Filed 2–8–23; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Grandfathering (GF) Registration Notice

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Grandfathering Registration for projects by the Susquehanna River Basin Commission during the period set forth in **DATES.**

DATES: January 1–31, 2023.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists GF Registration for projects, described below, pursuant to 18 CFR part 806, subpart E, for the time period specified above:

1. Halifax Area Water and Sewer Authority—Public Water Supply System, GF Certificate No. GF–202301239, Halifax Township, Dauphin County, Pa.; Wells 1, 2, and 3; Issue Date: January 13, 2023.

2. Lewistown Country Club, GF Certificate No. GF–202301240, Granville Township, Mifflin County, Pa.; Pond 8; Issue Date: January 13, 2023.

3. RADD Golf LLC—RADD Golf LLC dba Four Seasons Golf Club, GF Certificate No. GF–202301241, Exeter Borough, Luzerne County, Pa.; Slocum Avenue Well; Issue Date: January 31, 2023.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: February 6, 2023.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2023–02793 Filed 2–8–23; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Open Meeting: Community Development Advisory Board

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Community Development Advisory Board (the Advisory Board), which provides advice to the Director of the Community Development Financial Institutions Fund (CDFI Fund). This meeting will be conducted virtually. A link to register to view the meeting can be found at the top of *www.cdfifund.gov/cdab.*

DATES: The meeting will be held from 2:00 p.m. to 4:00 p.m. Eastern Time on Tuesday, February 28, 2023.

Submission of Written Statements: Participation in the discussions at the meeting will be limited to Advisory Board members, Department of the Treasury staff, and certain invited guests. Anyone who would like to have the Advisory Board consider a written statement must submit it by 5:00 p.m. Eastern Time on Monday, February 20, 2023. Send electronic statements to *AdvisoryBoard@cdfi.treas.gov.*

In general, the CDFI Fund will make all statements available in their original format, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers, for virtual public inspection and copying. The CDFI Fund is open on official business days between the hours of 9:00 a.m. and 5:00 p.m. Eastern Time. You can make arrangements to virtually inspect statements by emailing *AdvisoryBoard@cdfi.treas.gov.* All statements received, including attachments and other supporting materials, are part of the public record and subject to public

disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Bill Luecht, Senior Advisor, Office of Legislative and External Affairs, CDFI Fund; (202) 653–0322 (this is not a toll free number); or *AdvisoryBoard@cdfi.treas.gov*. Other information regarding the CDFI Fund and its programs may be obtained through the CDFI Fund's website at *http://www.cdfifund.gov.*

SUPPLEMENTARY INFORMATION: Section 104(d) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325), which created the CDFI Fund, established the Advisory Board. The charter for the Advisory Board has been filed in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. 1001 *et seq.*), and with the approval of the Secretary of the Treasury.

The function of the Advisory Board is to advise the Director of the CDFI Fund (who has been delegated the authority to administer the CDFI Fund) on the policies regarding the activities of the CDFI Fund. The Advisory Board does not advise the CDFI Fund on approving or declining any particular application for monetary or non-monetary awards.

In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. 1009 and the regulations thereunder, Bill Luecht, Designated Federal Officer of the Advisory Board, has ordered publication of this notice that the Advisory Board will convene an open meeting, which will be conducted virtually, from 2:00 p.m. to 4:00 p.m. Eastern Time on Tuesday, February 28. Members of the public who wish to view the meeting must register in advance. The link to the registration system can be found in the meeting announcement found at the top of *www.cdfifund.gov/cdab.* The registration deadline is 11:59 p.m. Eastern Time on Sunday, February 26, 2023.

The Advisory Board meeting will include a report from the CDFI Fund Director on the activities of the CDFI Fund since the last Advisory Board meeting, particularly the status of the CDFI Certification Application review process. In addition, there will be a discussion regarding two newly formed subcommittees.

Authority: 12 U.S.C. 4703.

Jodie L. Harris,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2023–02802 Filed 2–8–23; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee February 28–March 1, 2023; Public Meeting

ACTION: Notice of meeting.

Pursuant to United States Code, title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for February 28 and March 1, 2023.

Date: February 28, 2023 and March 1, 2023.

Time: 9 a.m. to 12:00 p.m. (February 28, 2023) and 9 a.m. to 1:00 p.m. (March 1, 2023) (ET).

Location: 8th Floor Conference Room; United States Mint; 801 9th Street NW; Washington, DC 20220.

Subject: February 28: Review and discussion of candidate designs for the Willie O'Ree Congressional Gold Medal, candidate designs for the 2024 American Innovation $1 Coin for Missouri, and candidate designs for the Liberty and Britannia Gold Coin and Silver Medal. March 1: Review and discussion of candidate designs for the 2024 American Women Quarters.

Interested members of the public may dial in to listen to the meeting at (888) 330–1716; Access Code: 1137147.

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and access information.

The CCAC advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals; advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made; and makes recommendations with respect to the mintage level for any commemorative coin recommended.

For members of the public interested in listening in to the provided call number, this is a reminder that the public attendance is for listening purposes only. Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by email to *info@ccac.gov.*

For Accommodation Request: If you need an accommodation to listen to the CCAC meeting, please contact the Office of Equal Employment Opportunity by February 17, 2023. You can submit an email request to *ReasonableAccommodations@usmint.treas.gov* or call 202–354–7260 or 1–888–646–8369 (TTY).

FOR FURTHER INFORMATION CONTACT: Jennifer Warren, United States Mint Liaison to the CCAC; 801 9th Street NW; Washington, DC 20220; or call 202–354–7208.

(Authority: 31 U.S.C. 5135(b)(8)(C).)

Eric Anderson,

Executive Secretary, United States Mint.

[FR Doc. 2023–02698 Filed 2–8–23; 8:45 am]

BILLING CODE 4810–37–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission. The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.'' Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on February 24, 2023 on ''China's Challenges and Capabilities in Educating and Training the Next Generation Workforce.''

DATES: The hearing is scheduled for Friday, February 24, 2023 at 9:30 a.m.

ADDRESSES: Members of the public will be able to attend in person at Dirksen Senate Office Building, Room 406, or view a live webcast via the Commission's website at *www.uscc.gov. Visit the Commission's website for any further instructions or changes to the status of public access to Capitol grounds. Reservations are not required to view the hearing online or in person.*

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Jameson Cunningham, 444 North Capitol Street NW, Suite 602, Washington, DC 20001; telephone: 202–624–1496, or via email at *jcunningham@uscc.gov. Reservations are not required to attend the hearing.*

ADA Accessibility: For questions about the accessibility of the event or to request an accommodation, please contact Jameson Cunningham via email at *jcunningham@uscc.gov.* Requests for

an accommodation should be made as soon as possible, and at least five business days prior to the event.

SUPPLEMENTARY INFORMATION:

Background: This is the second public hearing the Commission will hold during its 2023 report cycle. The hearing will start with an assessment of the state of education in China and its interconnection with China's economic growth and development. Next, the hearing will examine how China's higher education system advances growth, knowledge, and innovation. Finally, the hearing will evaluate China's education policies aimed at promoting strategic and emerging industries and the implications for strategic competition with the United States.

The hearing will be co-chaired by Commissioner Robin Cleveland and Commissioner Reva Price. Any interested party may file a written statement by February 24, 2023 by transmitting to the contact above. A portion of the hearing will include a question and answer period between the Commissioners and the witnesses.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005), as amended by Public Law 113–291 (December 19, 2014).

Dated: February 1, 2023.

Daniel W. Peck,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2023–02699 Filed 2–8–23; 8:45 am]

BILLING CODE 1137–00–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0176]

Agency Information Collection Activity: Certification of Training Hours, Wages, and Progress

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 10, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0176'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0176'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 501(a), and 38 U.S.C. 3677.

Title: Certification of Training Hours, Wages, and Progress.

OMB Control Number: 2900–0176.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–1905c is used to gather the necessary information to determine any changes in enrollment certification, and document monthly progression and attendance as outlined in the claimant's vocational rehabilitation plan. This information is essential to track the type and hours of training, as well as the rating of the claimant's performance toward the completion of his or her training program under 38 U.S.C. chapter 31 and 38 U.S.C. chapter 35. Without the information gathered on this form, benefits could be delayed under 38 U.S.C. 501(a).

Affected Public: Individuals and households.

Estimated Annual Burden: 380 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,140.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–02737 Filed 2–8–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Thursday,

No. 27 February 9, 2023

Part II

Department of Housing and Urban Development

24 CFR Parts 5, 91, 92, et al.

Affirmatively Furthering Fair Housing; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 91, 92, 93, 570, 574, 576, 903 and 983

[Docket No. FR–6250–P–01]

RIN 2529–AB05

Affirmatively Furthering Fair Housing

AGENCY: Office of the Secretary, Department of Housing and Urban Development (HUD).

ACTION: Proposed rule.

SUMMARY: Through this rulemaking, HUD proposes to implement the obligation to affirmatively further the purposes and policies of the Fair Housing Act, which is title VIII of the Civil Rights Act of 1968, with respect to certain recipients of HUD funds. The Fair Housing Act not only prohibits discrimination, but also directs HUD to ensure that the agency and its program participants will proactively take meaningful actions to overcome patterns of segregation, promote fair housing choice, eliminate disparities in housing-related opportunities, and foster inclusive communities that are free from discrimination. This proposed rule builds on the steps previously taken in HUD's 2015 Affirmatively Furthering Fair Housing (AFFH) final rule to implement the AFFH obligation and ensure that Federal funding is used in a systematic way to further the policies and goals of the Fair Housing Act. This rule proposes to retain much of the 2015 AFFH Rule's core planning process, with certain improvements such as a more robust community engagement requirement, a streamlined required analysis, greater transparency, and an increased emphasis on goal setting and measuring progress. It also includes mechanisms to hold program participants accountable for achieving positive fair housing outcomes and complying with their obligation to affirmatively further fair housing, modeled after those processes under other Federal civil rights statutes that apply to recipients of Federal financial assistance.

DATES: *Comment due date:* April 10, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments: Facsimile (FAX) comments are not acceptable.

Public Inspection of Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (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 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 all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Tiffany Johnson, Director, Policy and Legislative Initiatives Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW, Room 5250, Washington, DC 20410–8000, telephone number 202–402–2881 (this is not a toll-free number). Individuals who are deaf or hard of hearing and individuals with speech impairments may access this number via TTY by calling the toll-free Federal Relay Service during working hours at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Purpose of the Regulatory Action

Housing plays a central role in American life. Where children live and grow up is inextricably linked to their level of educational attainment, their relationship with policing and the criminal justice system, what jobs they can obtain as adults, how much wealth their family can attain, whether they will someday purchase their own home, whether they will face chronic health conditions or other lifelong obstacles, and ultimately the opportunities they will be able to provide for their own children and grandchildren. As the United States Supreme Court noted recently, in enacting the Fair Housing Act more than fifty years ago, Congress recognized the critical role housing played and continues to play in creating and maintaining inequities based on race and color. *See Tex. Dep't of Housing and Cmty Affairs* v. *Inclusive Cmtys Project, Inc.,* 576 U.S. 519, 546 (2015) (''The [Fair Housing Act] must play an important part in avoiding the Kerner Commission's grim prophecy that 'our Nation is moving toward two societies, one [B]lack, one [W]hite—separate and unequal.' The Court acknowledges the Fair Housing Act's role in moving the Nation toward a more integrated society.'') (internal citations omitted).

Notwithstanding progress in combatting some types of housing discrimination, the systemic and pervasive residential segregation that was historically sanctioned (and even worsened) by Federal, State, and local law, and that the Fair Housing Act was meant to remedy has persisted to this day. In countless communities throughout the United States, people of different races still reside separate and apart from each other in different neighborhoods, often due to past government policies and decisions. Those neighborhoods have very different and unequal access to basic infrastructure (streets, sidewalks, clean water, and sanitation systems) and other things that every thriving community needs, such as access to affordable and accessible housing, public transportation, grocery and retail establishments, health care, and educational and employment

opportunities—frequently because government itself has intentionally denied resources to the neighborhoods where communities of color live. And this segregation is perpetuated by policies that effectively preclude mobility to neighborhoods where opportunity is greater.

Moreover, inequities in real housing choice do not exist solely on race or color lines, but across all the classes the Fair Housing Act protects. Individuals with disabilities too frequently are excluded not just from buildings but from whole communities because of lack of accessible and affordable housing. The widespread lack of quality affordable housing shuts out families with children and members of other protected class groups.

This proposed rule implements the Fair Housing Act's Affirmatively Furthering Fair Housing (AFFH) mandate across the Nation to address these inequities and others that cause unequal and segregated access to housing and the platform it provides for a better life. The proposed rule is intended to foster local commitment to addressing local and regional fair housing issues, both requiring and enabling communities to leverage and align HUD funding with other Federal, State, or local resources to develop innovative solutions to inequities that have plagued our society for far too long. The proposed rule is meant to provide the tools that HUD—together with other Federal, State, and local agencies, as well as public housing agencies—can use to overcome centuries of separate and unequal access to housing opportunity. In line with the Nation's current reckoning with racial and other types of inequity, the proposed rule is designed to assist HUD and its program participants to take advantage of a unique opportunity to fulfill the promise made when the Fair Housing Act was enacted on April 11, 1968.

This proposed rule takes as its starting point the fair housing planning process created by the 2015 AFFH Rule (80 FR 42272, July 16, 2015), which was a significant step forward in AFFH implementation. It then proposes refinements, informed by lessons HUD learned from its implementation of the 2015 AFFH Rule, by feedback provided by States and localities across the country, and by stakeholder input. For example, the proposed rule is designed to reduce burden on program participants by streamlining the analysis of fair housing issues that they must perform, allowing them to focus more directly on the setting of effective fair housing goals and strategies to achieve them. It also would provide greater accountability mechanisms and increase transparency to and participation by the public.

Ultimately, this proposed rule would provide a framework under which program participants will set and implement meaningful fair housing goals that will determine how they will leverage HUD funds and other resources to affirmatively further fair housing, promote equity in their communities, decrease segregation, and increase access to opportunity and community assets for people of color and other underserved communities.

Summary of Legal Authority

The Fair Housing Act (title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–3619) declares that it is ''the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.'' See 42 U.S.C. 3601. Accordingly, the Fair Housing Act prohibits, among other things, discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions because of ''race, color, religion, sex,[1] familial status,[2] national origin, or handicap.'' [3] See 42 U.S.C. 3604 and 3605. Section 808(d) of the Fair Housing Act requires all executive branch departments and agencies administering housing and urban development programs and activities to administer these programs in a manner that affirmatively furthers fair housing. See 42 U.S.C. 3608. Section 808(e)(5) of the Fair Housing Act (42 U.S.C. 3608(e)(5)) requires that HUD programs and activities be administered in a manner that affirmatively furthers the policies of the Fair Housing Act.

Summary of Major Provisions of the Rule

The proposed rule retains much of the framework of the 2015 AFFH Rule. Under the proposed rule, as under the 2015 AFFH Rule, program participants will identify fair housing issues, prioritize the fair housing issues they will focus on overcoming in the next three to five years, and develop the goals they will implement to overcome those fair housing issues. The proposed rule contains refinements based on HUD's experience implementing the 2015 AFFH Rule and input from many stakeholders. It is structured to simplify and provide greater flexibility: regarding the analysis that program participants must perform as part of their Equity Plans (which are a modified version of the Assessments of Fair Housing performed under the 2015 AFFH Rule), to allow more time and energy to be spent on effective goal setting; to provide clarity, direction, and guidance for program participants to promote fair housing choice; to provide more transparency to the public and greater opportunity for public input; and to provide accountability, a mechanism for regular progress evaluation, and a greater set of enforcement options to ensure that program participants are meeting their planning commitments and to provide them the opportunity to revise commitments where circumstances change. The proposed rule will advance these objectives in a manner that is informed by the lessons HUD learned from the implementation of the 2015 AFFH Rule by:

a. *Giving underserved communities a greater say in the actions program participants will take to address fair housing issues.* When HUD implemented its 2015 AFFH Rule, program participants and community members alike consistently reported to HUD that community engagement (then called community participation) was an extremely effective and important part of identifying fair housing issues and figuring out how best to prioritize and address them. The proposed rule makes that process more inclusive and robust, for example by requiring program participants to consult with a broad range of community members, to hold meetings in diverse settings, ensure that individuals with disabilities and their advocates have equal access to those meetings, and partner with local community-based organizations and stakeholders to engage with protected class groups and underserved communities. The proposed rule

[1] Consistent with established practice, HUD interprets the term ''sex'' to include gender identity, sexual orientation, and nonconformance with gender stereotypes. *See* Memorandum from Damon Y. Smith, Principal Deputy General Counsel to Jeanine M. Worden, Acting Assistant Secretary for Fair Housing and Equal Opportunity, ''Application to the Fair Housing Act of the Supreme Court's decision in *Bostock* v. *Clayton County, GA*'' (Feb. 9, 2021), *available at https://www.hud.gov/sites/dfiles/ENF/documents/Bostock%20Legal%20Memorandum%2002-09-2021.pdf.*

[2] The term ''familial status'' is defined in the Fair Housing Act at 42 U.S.C. 3602(k). It includes one or more children who are under the age of 18 years being domiciled with a parent or guardian, the seeking of legal custody, or pregnancy.

[3] Although the Fair Housing Act was amended in 1988 to extend civil rights protections to persons with ''handicaps,'' the term ''disability'' is more commonly used and accepted today to refer to an individual's physical or mental impairment that is protected under Federal civil rights laws, the record of such an impairment, and being regarded as having such an impairment. For this reason, except where quoting from the Fair Housing Act, this preamble and proposed rule use the term ''disability.''

empowers broader segments of the community by, for example, requiring program participants to engage with a broad cross-section of the community, which could include advocates, clergy, community organizations, local universities, resident advisory boards, healthcare professionals and other service providers, and fair housing groups. HUD will also make the data HUD provides to program participants publicly available, including maps and other information demonstrating the existence of fair housing issues such as segregated areas, to facilitate public engagement throughout the process. HUD specifically seeks comment below regarding how it can best ensure that community engagement is effective in informing the Equity Plan. The proposed rule also requires program participants to submit, along with their Equity Plans, more information regarding their community engagement efforts than was required by the 2015 AFFH Rule. Additionally, as described further below, the proposed rule allows the public to submit information directly to HUD regarding submitted Equity Plans, providing HUD greater ability to ensure that community engagement requirements are satisfied. HUD also intends to supply more technical assistance for program participants on effective ways to conduct community engagement.

b. *Streamlining the Equity Plan's required fair housing analysis, while providing easy-to-use data to support that analysis.* HUD will help program participants and their communities understand the data HUD provides them. Aided by that data and more comprehensive community engagement, program participants will be empowered to identify key fair housing issues more effectively and efficiently without unnecessary burden. Under HUD's 2015 AFFH Rule, HUD provided program participants with considerable data and then required program participants to conduct extensive data analysis in response to a large number of questions. This data-driven analysis was very useful for identifying fair housing issues such as patterns of segregation, but some program participants, particularly smaller ones that lacked relevant expertise, found it more difficult to complete than HUD had intended. The 2015 AFFH Rule used an Assessment Tool that contained approximately 100 questions program participants were required to answer in a prescribed format, as well as about forty contributing factors that program participants were required to consider for each fair housing issue they identified. Some program participants, working on their own or with technical assistance from HUD, conducted successful fair housing analyses using the Assessment Tool. Other program participants, however, struggled to properly interpret the data provided by HUD, and several program participants retained consultants to perform the bulk of the fair housing analysis for them. In HUD's experience reviewing the fair housing plans submitted pursuant to the 2015 AFFH Rule, the fair housing analyses conducted by program participants themselves or with technical assistance from fair housing groups, universities, or HUD were typically of much better quality than the fair housing analyses prepared for program participants solely by consultants. Put differently, the fair housing plans prepared by program participants themselves typically reflected better analysis that gave greater consideration to local fair housing issues and history rather than more generic approaches taken by consultants that prepared analyses for multiple program participants in different geographic areas of the country. The proposed rule, therefore, reflects improvements on the 2015 AFFH Rule framework and is designed to reduce burden for program participants in conducting the fair housing analysis portion of their Equity Plan and identifying fair housing issues, leaving program participants more time to establish meaningful fair housing goals and making them more likely to conduct their own analyses. Under the proposed rule, program participants will conduct their fair housing analyses to identify fair housing issues by responding to questions in a few broad areas (seven for consolidated plan recipients, five for public housing agencies) that HUD is proposing to constitute the core areas of analysis. While HUD anticipates providing program participants with flexibility on the format of their Equity Plans, HUD will expect program participants to answer all required questions, including those that assess the reasons fair housing issues exist, as in the 2015 AFFH Rule. Under this proposed rule, HUD is considering ways to reduce burden for program participants by, for example, providing the program participant with not only raw data and maps, but is also considering providing technical assistance that helps highlight key takeaways and fair housing issues. HUD will also provide technical assistance on common fair housing issues, potential fair housing goals that could overcome fair housing issues, and additional training on how to identify and prioritize fair housing issues. Finally, HUD will make all program participants' Equity Plans available on a HUD-maintained web page, allowing program participants to review other program participants' Equity Plans that have been accepted by HUD and learn from the experiences of those who already have been through the process. While HUD believes these changes will make it easier for many program participants and their communities to effectively use HUD-provided data, it also understands that the raw data and the AFFH Data & Mapping Tool (AFFH–T) made available under the 2015 AFFH Rule have proven invaluable for researchers and high-capacity program participants, and HUD will continue to make such data available.

c. *Placing greater focus on fair housing goals.* A key difference between the proposed rule and the 2015 AFFH Rule is a much greater focus on HUD's review of program participants' goals that will contribute to positive fair housing outcomes. While the proposed rule sets out questions for program participants to answer, it does not specify the content or length of responses. In some cases, the answer to the question will be relatively clear based on the HUD-provided data and technical assistance, and the program participant will only then need to assess the causes and circumstances that result in fair housing issues. In other instances, program participant may need to do more analysis, including assessing local data, local knowledge, and information obtained through community engagement, in order to sufficiently respond to the question. HUD is making clear here, and will continue to do so with technical assistance and guidance, that the purpose of the questions is not to generate an extensive written analysis of local conditions for its own sake, but to require program participants to give serious consideration to the specific local conditions (such as the existence of segregation, or the lack of housing choice throughout a jurisdiction) that are likely to implicate fair housing issues faced by different protected class groups. Accordingly, HUD's review of program participants' answers to those questions will entail confirming that the program participant did an adequate job of identifying the fair housing issues revealed by the HUD-provided data and by information provided during community engagement. HUD's review of fair housing goals, meanwhile, will entail determining whether the program participant's goals have been designed

and can be reasonably expected to overcome the fair housing issues that the program participant has identified and prioritized for action in the next three to five years. Stated plainly, HUD's review will focus primarily on whether the Equity Plan appropriately identifies the relevant fair housing issues and establishes fair housing goals that can realistically be expected to address them and produce meaningful fair housing outcomes for various protected class groups in the program participant's underserved communities; HUD's review will not focus on the volume of written analysis underlying the identification of the fair housing issues.

d. *Providing HUD more flexibility to work with program participants to improve a submitted Equity Plan and ensure it meets regulatory requirements.* HUD's experience implementing the 2015 AFFH Rule demonstrated that a robust back and forth between HUD and program participants regarding the content of submitted plans was important to the rule's success; in many instances, a submitted plan improved substantially as a result of HUD engagement. However, the structure of the 2015 AFFH Rule limited HUD's practical ability to do this work. HUD was required to either accept or not accept a plan within 60 days of submission. If an Assessment of Fair Housing (AFH) was not accepted by HUD after the initial submission, HUD provided the program participant an opportunity to revise and resubmit the plan for HUD review; however, HUD then had a limited amount of time to review the revised plan, work with the program participant to address remaining issues, and then accept that plan before a decision on a submitted consolidated plan or public housing agency (PHA) plan needed to be rendered. If the program participant could not achieve an accepted AFH by the time the program participant's consolidated plan or PHA Plan was due, the automatic consequence was a cut-off of Federal funding. Faced with that consequence, HUD ultimately accepted every plan, although many of the plans that HUD accepted could still have benefited from improvements if there had been additional time for HUD to work with the program participant. This proposed rule provides HUD more time—100 days, with the ability to extend that time for good cause—to review a submitted Equity Plan and work with a program participant to ensure the plan meets the requirements of this proposed rule. In addition, the proposed rule provides that, if a program participant does not have an accepted Equity Plan by the time a consolidated plan or PHA Plan must be approved, to have that plan approved it must provide HUD with special assurances that it will achieve an Equity Plan that meets regulatory requirements within 180 days of the end of HUD's review period for its consolidated plan or PHA Plan. At the end of the 180-day period, if the program participant still does not have an Equity Plan that has been accepted by HUD, HUD will seek the most serious of remedies by initiating the termination of funding and will not grant or continue granting applicable funds. HUD believes this structure will provide it with the necessary enforcement authority and the flexibility to work with program participants to achieve an Equity Plan that meets this proposed rule's requirements. By obtaining special assurances, HUD will continue to have the ability to enforce this proposed rule by initiating the termination of funding for program participants that do not provide the required special assurances or that do not achieve an Equity Plan that is accepted by HUD in the time allotted. HUD believes the addition of the procedures relating to special assurances provide a stronger yet more flexible mechanism for HUD to compel compliance with the requirements of this proposed rule beyond what it could require under the 2015 AFFH Rule.

e. *Creating a more direct linkage between the Equity Plan's fair housing goals and the planning processes in the consolidated plan, annual action plan, or PHA Plan.* The proposed rule requires the program participant to establish concrete fair housing goals that are designed and can be reasonably expected to achieve meaningful fair housing outcomes. In the process, program participants will identify the funding and any contingencies that must be met for the program participant to achieve the goal. The proposed rule then requires program participants to incorporate the fair housing goals from their Equity Plans into their consolidated plan, annual action plan, or PHA Plan. The direct linkage between the Equity Plan and subsequent program planning documents will enable program participants to make more informed decisions about how to overcome circumstances that cause, increase, contribute to, maintain, or perpetuate fair housing issues. By incorporating their fair housing goals, strategies, and actions into their planning documents, program participants will be better positioned to build equity and fairness into their decision-making processes for the use of resources and other investments, live up to the commitments they have made in Equity Plans, and ultimately fulfill their obligations to affirmatively further fair housing.

f. *Implementing a more transparent process for program participants' development and HUD's review of Equity Plans.* The proposed rule will enable members of the public to have online access to all submitted Equity Plans; to provide HUD with additional information regarding Equity Plans that are under HUD review; and to know HUD decisions on Equity Plan acceptance and on program participants' annual progress evaluations. HUD will use information submitted by the public in its review of the Equity Plan. This transparency is intended, in part, to assist program participants with understanding how other similarly situated program participants conducted their analyses. HUD believes that this transparency will allow the public to be more engaged in the local fair housing planning process, the implementation of fair housing goals, and ultimately in assisting their local leaders in determining how to allocate resources to address fair housing issues.

g. *Tracking progress on fair housing goals.* The proposed rule requires program participants to conduct annual progress evaluations regarding the progress made on each goal. These progress evaluations will be submitted to HUD, and HUD will make them publicly available on a HUD-maintained website. This annual progress evaluation ensures that goal implementation stays on track and that progress (or lack thereof) is disclosed to the public. In conducting this evaluation, a program participant must assess whether to establish a new fair housing goal or whether to modify an existing fair housing goal because it cannot be achieved in the amount of time previously anticipated. The proposed rule allows program participants, with HUD's permission, to submit a revised Equity Plan that modifies goals or set new goals if circumstances changed or if the established goals have been accomplished. HUD believes this ability to account for changed circumstances will make program participants more willing to set ambitious, creative goals that may be dependent on certain contingencies, since the goals can be updated if the contingencies are not met. However, HUD will not grant permission to alter goals if the program participant is simply choosing not to take necessary steps. The annual progress evaluation will allow for public

awareness that a goal is not being met before it is too late to change course to meet it.

h. *Increasing accountability by creating a mechanism for members of the public to file complaints and for HUD to further engage in oversight and enforcement.* Under the proposed rule, HUD will have the ability to open compliance reviews, and members of the public will be able to file complaints directly with HUD regarding a program participant's AFFH-related activities. While these processes are new to AFFH compliance, the proposed regulatory provisions relating to the filing and investigation of complaints and HUD's procedures for obtaining compliance are consistent with the oversight and enforcement mechanisms that exist for other Federal civil rights statutes that HUD implements. Accordingly, HUD anticipates that the agency, program participants, and the public should be able to readily acclimate themselves to these processes and that the associated burden will be manageable.

These improvements are intended to result in tangible fair housing outcomes that advance equity and increase opportunity for people of color and other underserved communities while minimizing burden and constraints on program participants in how those outcomes are determined and achieved. Ultimately, those tangible fair housing outcomes will be locally driven based on the fair housing issues that are presented by local circumstances. This proposed rule does not dictate the particular steps a program participant must take to resolve a fair housing issue. Rather, the proposed rule is intended to empower and require program participants to meaningfully engage with their communities and confront difficult issues in order to achieve integrated living patterns, overcome historic and existing patterns of segregation, reduce racial and ethnic concentrations of poverty, increase access to homeownership, and ensure realistic and truly equal access to opportunity and community assets for members of protected class groups, including those in historically underserved communities.

As previously noted, this proposed rule is intended to ensure that program participants set and achieve meaningful fair housing goals while reducing program participant burden in performing the required analysis in the planning stage. The proposed rule reduces burden compared with the 2015 AFFH Rule for program participants through the provision of HUD data and assistance in interpreting the data and other modifications such as not prescribing a particular format for the written analysis. It is HUD's intention to allow program participants to spend less time on data analysis and more time on setting meaningful fair housing goals that are based on that data and other information, including conversations with their local community regarding the most effective means of advancing fair housing and equity. This does not diminish the key role that interpretation of maps and other objective data will continue to play in the required analysis, but rather enables program participants to focus more of their time and energy on the fair housing goals and strategies and actions they will employ to overcome the fair housing issues identified using the data. HUD will continue to provide program participants datasets, including maps, and tools that contain at least as much data as is currently provided in the AFFH–T Data & Mapping Tool. HUD will continue to make these data publicly available, including for use by program participants in conducting their Equity Plans, at *https://www.hud.gov/program_offices/fair_housing_equal_opp/affh.* HUD will explore ways to build on and improve the current AFFH–T Data & Mapping Tool and will continue to evaluate whether these data or other data may be helpful to program participants and the public in undertaking an analysis of how to advance fair housing outcomes within local communities.

HUD is contemplating making its provision of these data more user friendly in ways that will reduce burden for smaller program participants and those with fewer resources while increasing their understanding—and their communities' understanding—of what those data signify. Along with updating and improving the current AFFH–T Data & Mapping Tool, HUD is contemplating providing technical assistance that would highlight key points to help program participants understand what those maps and tables show. For example, technical assistance may include identification of racially or ethnically concentrated areas of poverty (R/ECAPs) in the jurisdiction and demographic information about the R/ECAPs' residents, making it simpler for the program participant to answer the relevant question in the required analysis. HUD anticipates that these efforts will reduce the burden for program participants to answer the required analysis questions and identify fair housing issues, while providing information critical to the fair housing analysis in a format that also can be understood by the community.

The proposed rule is less burdensome compared to the 2015 AFFH Rule. While this proposed rule continues to require program participants to review and understand the data and their fair housing implications, including for purposes of setting fair housing goals, program participants will not be required to submit responses in the form of data analysis. Except as specifically instructed in the proposed analysis questions (in instances where HUD expects its own provision of data to make it simple to do so), program participants would not need to reference specific percentages or calculations, for example, regarding demographics or segregation, but would be required to show the connection between their data analysis, their identification of fair housing issues, and the establishment fair housing goals. Instead, the data provided by HUD, along with local data and local knowledge, should be sufficient to drive the program participant's analysis and ultimate identification of goals and strategies. The program participant's answers should be informed by data but need not be written in that form. These improvements will make it easier for smaller program participants and those with fewer resources to complete the written analysis, and also make it easier for the community to engage in the process, understand the analysis of fair housing issues in a submitted Equity Plan, and provide additional relevant information to facilitate HUD's review. Program participants will have the opportunity to engage with HUD staff to help ensure that consultants, contractors, or complex data analysis are not required to produce an Equity Plan that can be accepted.[4]

This proposed rule features much greater transparency for the public to see and participate in the decisions program participants make and HUD's responses to them. HUD expects to publish all Equity Plan submissions and decisions as to whether HUD has accepted the Equity Plan on its AFFH web page to further increase transparency and reduce burden for program participants. This transparency is intended, in part, to assist program participants with understanding how other similarly situated program participants conducted their analyses. HUD believes that by publishing this

[4] HUD is aware that during implementation of the 2015 AFFH Rule, many university-based researchers (along with fair housing groups and other non-profit organizations) assisted program participants in analyzing and understanding HUD-provided data for purposes of identifying fair housing issues and establishing fair housing goals in their AFHs.

information, not only will local officials be able to learn from other jurisdictions' Equity Plans, but also the public will be more engaged in the local fair housing planning process and implementation of local fair housing goals. HUD anticipates that this approach may also lead to collaboration with other government entities as well as the private sector with respect to housing and community development activities and investments in a program participant's jurisdiction. In addition, this more robust community engagement process to discuss fair housing issues and potential fair housing goals will lead to more transparent fair housing planning and greater ability to influence equitable outcomes for members of protected class groups, including people of color, individuals with disabilities, and other underserved communities.

HUD expects that the refinements made to this proposed rule compared with the 2015 AFFH Rule will help program participants more easily identify where equity in their communities is lacking and how they can affirmatively further fair housing by advancing equity for protected class groups through the use of HUD funds, other investments, and policy decisions. HUD's commitment to be a partner in the planning process for program participants and the public alike should result in a reduction of burden and greater transparency and public participation, and result in program participants undertaking meaningful actions to fulfill the promise of the AFFH mandate established in 1968. HUD is soliciting comment on this proposed rule and also seeks comment on specific topics in Section IV of this preamble.

Summary of Benefits and Costs

As detailed in the Regulatory Impact Analysis, HUD does not expect a large aggregate change in compliance costs for program participants as a result of the proposed rule. As a result of increased emphasis on affirmatively furthering fair housing within the planning process, there may be increased compliance costs for some program participants, while for others the improved process and goal setting, combined with HUD's provision of foundational data, is likely to decrease compliance costs. Program participants are currently required to engage in outreach and collect data in order to support their certifications that they are affirmatively furthering fair housing. As more fully addressed in the Regulatory Impact Analysis that accompanies this rule, HUD estimates that compliance with these additional planning requirements would collectively cost program participants a total of $5.2 million to $27 million per year, once the Equity Plan cycle is fully implemented, a sum that is offset by the societal benefits accruing to fair housing goals that decrease segregation and the lack of equal access to housing and related opportunities throughout society.

Further, HUD believes that the proposed rule has the potential for substantial benefit for program participants and the communities they serve. The proposed rule would improve the fair housing planning process by providing greater clarity regarding the steps program participants must undertake to meaningfully affirmatively further fair housing, and at the same time provide better resources for program participants to use in taking such steps, thus increasing AFFH compliance more broadly. Through this rule, HUD commits to provide States, local governments, PHAs, the communities they serve, and the general public with local and regional data, as well as assistance in understanding that data, as discussed further below. From these data, program participants should be better able to evaluate their present environment to assess fair housing issues, identify the primary determinants that account for those issues, set forth fair housing priorities and goals, and document these activities.

The rule covers program participants that are subject to a great diversity of local preferences and economic and social contexts across American communities and regions. For these reasons, HUD recognizes there is significant uncertainty associated with quantifying outcomes of the process, as proposed by this rule, to identify barriers to fair housing, the priorities of program participants in deciding which barriers to address, the types of policies designed to address those barriers, and the effects of those policies on protected classes. In brief, because of the diversity of communities and regions across the Nation and the resulting uncertainty of precise outcomes of the proposed AFFH planning process, HUD cannot estimate the specific benefits and costs of policies influenced by the rule. HUD does recognize that segregation, combined with the legacy of discrimination against protected class groups and longstanding disinvestment in certain neighborhoods, has imposed and continues to impose substantial costs on members of protected classes and society in general by reducing employment, education, and homeownership opportunities as well as the costs associated with reduced health and safety in neighborhoods that have long faced disinvestment and other adverse environmental impacts.[5] HUD is confident, as discussed more fully below, that the rule will create a process that allows for each jurisdiction to not only undertake meaningful fair housing planning, but also build capacity and develop a thoughtful strategy to affirmatively further fair housing and make progress towards a more integrated society with more equitable access to opportunity. The benefits of undertaking meaningful actions to produce an integrated, just, and prosperous society and otherwise further fair housing objectives far outweigh the costs.

II. Background

A. Legal Authority

The Fair Housing Act (title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–3619), enacted into law on April 11, 1968, declares that it is ''the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.'' See 42 U.S.C. 3601. Accordingly, the Fair Housing Act prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions because of race, color, religion, sex, familial status, national origin, or disability. See 42 U.S.C. 3601 *et seq.* In addition to prohibiting discrimination, the Fair Housing Act (42 U.S.C. 3608(e)(5)) requires that HUD programs and activities be administered in a manner to affirmatively further the policies of the Fair Housing Act. Section 808(d) of the Fair Housing Act (42 U.S.C. 3608(d)) directs other Federal agencies ''to administer their programs . . . relating to housing and urban development . . . in a manner affirmatively to further'' the policies of the Fair Housing Act, and to ''cooperate with the Secretary'' in this effort.

The Fair Housing Act's provisions related to ''affirmatively . . . further[ing]'' fair housing, contained in sections 3608(d) and (e), require more than compliance with the Act's anti-discrimination mandates. *NAACP, Boston Chapter* v. *HUD,* 817 F.2d 149

[5] *See* Acs, Pendall, Trekson, et al., ''The Cost of Segregation: National Trends and the Case of Chicago 1990–2010,'' *Urban Institute* and *The Metropolitan Housing and Communities Policy Center* (2017), *available at https://www.urban.org/sites/default/files/publication/89201/the_cost_of_segregation.pdf* (finding that higher levels of racial segregation were associated with lower incomes for Black residents, lower educational attainment levels for White and Black residents, and lower levels of public safety for all residents).

(1st Cir. 1987); see, *e.g., Otero* v. *N.Y. City Hous. Auth.,* 484 F.2d 1122 (2d Cir. 1973); *Shannon* v. *HUD,* 436 F.2d 809 (3d Cir. 1970). When the Fair Housing Act was originally enacted in 1968 and amended in 1988, major portions of the statute involved the prohibition of discriminatory activities (whether undertaken with a discriminatory purpose or with a discriminatory effect) and how private litigants and the government could enforce these provisions.

In sections 3608(d) and (e) of the Fair Housing Act, however, Congress went further by mandating that ''programs and activities relating to housing and urban development'' be administered ''in a manner affirmatively to further the purposes of this subchapter.'' This is not only a mandate to refrain from discrimination but a mandate to take the type of actions that undo historic patterns of segregation and other types of discrimination and afford access to opportunity that has long been denied. Congress has repeatedly reinforced and ratified this uncontradicted interpretation of the AFFH mandate, requiring in the Housing and Community Development Act of 1974, the Cranston-Gonzalez National Affordable Housing Act, and the Quality Housing and Work Responsibility Act of 1998, that covered HUD program participants certify, as a condition of receiving Federal funds, that they will affirmatively further fair housing. See 42 U.S.C. 5304(b)(2), 5306(d)(7)(B), 12705(b)(15), 1437C–1(d)(16).[6]

Courts have found that the purpose of the affirmatively furthering fair housing mandate is to ensure that recipients of Federal funds used for housing or urban development and certain other Federal funds do more than simply not discriminate: recipients also must take actions to address segregation and related barriers for members of protected class groups, as often reflected in racially or ethnically concentrated areas of poverty. The U.S. Supreme Court, in one of the first Fair Housing Act cases it decided, acknowledged that the Act was intended to make significant change in addition to outlawing discrimination in housing, noting that ''the reach of the proposed law was to replace the ghettos 'by truly integrated and balanced living patterns.' '' *Trafficante* v. *Metro. Life Ins. Co.,* 409 U.S. 205, 211 (1972); *see also Client's Council* v. *Pierce,* 711 F.2d 1406, 1425 (8th Cir. 1983) (''Congress enacted section 3608(e)(5) to cure the widespread problem of segregation in public housing''); *see also Crow* v. *Brown,* 332 F. Supp. 382, 391 (N.D. Ga. 1971), *affirmed in part without op. and reversed in part without op. by Banks* v. *Perk,* 473 F.2d 910 (6th Cir. 1973) (''It is also clear that the policy of HUD requires that public housing be dispersed outside racially compacted areas . . . and [is] part of the national housing policy.[7] Indeed, relief has been granted to plaintiffs and against HUD for failing to comply with this affirmative duty to disperse public housing which is implicit in the Housing Act of 1949, the Civil Rights Act of 1964, and the Civil Rights Act of 1968.''). The Act recognized that ''where a family lives, where it is allowed to live, is inextricably bound up with better education, better jobs, economic motivation, and good living conditions.'' 114 Cong. Rec. 2276–2707 (1968). As the First Circuit has explained, section 3608(e)(5) and the legislative history of the Act show that Congress intended that ''HUD do more than simply not discriminate itself; it reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases.'' *NAACP, Boston Chapter* v. *HUD,* 817 F.2d at 154; see also *Otero,* 484 F.2d at 1134 (section 3608(d) requires that ''[a]ction must be taken to fulfill, as much as possible, the goal of open, integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups whose lack of opportunity the Act was designed to combat'').

The Act itself does not define the precise scope of the affirmatively furthering fair housing obligation for HUD or HUD's program participants. Over the years, courts have provided some guidance for this task. In the first appellate decision interpreting section 3608, for example, the U.S. Court of Appeals for the Third Circuit emphasized the importance of racial and socioeconomic data to ensure that ''the agency's judgment was an informed one'' based on an institutionalized method to assess site selection and related issues. *Shannon,* 436 F.2d at 821–22. In multiple other decisions, courts have set forth that section 3608 applies to specific policies and practices of HUD program participants. *See e.g., Otero,* 484 F.2d at 1132–37; *NAACP, Boston Chapter,* 817 F.2d at 156 (''. . . a failure to 'consider the effect of a HUD grant on the racial and socio-economic composition of the surrounding area' '' would be inconsistent with the Fair Housing Act's mandate); *Langlois* v. *Abington Hous. Auth.,* 207 F.3d 43 (1st Cir. 2000); *U.S. ex rel. Anti-Discrimination Ctr.* v. *Westchester Cnty.,* 2009 WL 455269 (S.D.N.Y. Feb. 24, 2009). The U.S. Court of Appeals for the First Circuit, in evaluating how the AFFH mandate applies to HUD and its program participants, including the decisions made in the administration of their programs and activities, further provided that ''the need for such consideration itself implies, at a minimum, an obligation to assess negatively those aspects of a proposed course of action that would further limit the supply of genuinely open housing and to assess those aspects of a proposed course of action that would increase that supply. If HUD is doing so in any meaningful way, one would expect to see, over time, if not in any individual case, HUD activity that tends to increase, or at least, that does not significantly diminish the supply of open housing.'' *NAACP, Boston Chapter,* 817 F.2d at 156.

More recently, in examining why regional solutions to segregation may be necessary, a United States District Court declared that ''[i]t is high time that HUD live up to its statutory mandate to consider the effect of its policies on the racial and socioeconomic composition of the surrounding area . . . The Court finds it no longer appropriate for HUD,

[6] Section 104(b)(2) of the Housing and Community Development Act (HCD Act) (42 U.S.C. 5304(b)(2)) requires that, to receive a grant, the state or local government must certify that it will affirmatively further fair housing. Section 106(d)(7)(B) of the HCD Act (42 U.S.C. 5306(d)(7)(B)) requires a local government that receives a grant from a state to certify that it will affirmatively further fair housing. The Cranston-Gonzalez National Affordable Housing Act (NAHA) (42 U.S.C. 12704 *et seq.*) provides in section 105 (42 U.S.C. 12705) that states and local governments that receive certain grants from HUD must develop a comprehensive housing affordability strategy to identify their overall needs for affordable and supportive housing for the ensuing 5 years, including housing for persons experiencing homelessness, and outline their strategy to address those needs. As part of this comprehensive planning process, section 105(b)(15) of NAHA (42 U.S.C. 12705(b)(15)) requires that these program participants certify that they will affirmatively further fair housing. The Quality Housing and Work Responsibility Act of 1998 (QHWRA), enacted into law on October 21, 1998, substantially modified the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act), and the 1937 Act was more recently amended by the Housing and Economic Recovery Act of 2008, Public Law 110–289 (HERA). QHWRA introduced formal planning processes for PHAs—a 5-Year Plan and an Annual Plan. The required contents of the Annual Plan included a certification by the PHA that the PHA will, among other things, affirmatively further fair housing.

[7] Reflecting the era in which it was enacted, the Fair Housing Act's legislative history and early court decisions refer to ''ghettos'' when discussing racially concentrated areas of poverty. In addition, much of the litigation during this period related to the siting of public housing; however, HUD notes that the holdings of these courts apply to all programs and activities administered by HUD and are not limited to the public housing program.

as an institution with national jurisdiction, essentially to limit its consideration of desegregative programs . . .'' *Thompson* v. *HUD,* 348 F. Supp. 2d 398, 409 (D. Md. 2005). The court emphasized the importance of using the AFFH mandate to afford choice to individuals and families about where they live by stating that, ''[i]n this regard, it is appropriate to note that there is a distinction between telling a person that he or she may not live in [a] place because of race and giving the person a choice so long as the place in question is, in fact, available to anyone without regard to race.'' *Thompson,* 398 F. Supp. 2d at 450. As recently as 2015, the U.S. Supreme Court explained that ''[m]uch progress remains to be made in our Nation's continuing struggle against racial isolation . . . The Court acknowledges the Fair Housing Act's continuing role in moving the Nation toward a more integrated society.'' *Tex. Dep't of Hous. Cmty. Affairs* v. *Inclusive Cmtys. Project, Inc.,* 576 U.S. 519, 546–47 (2015). As the Supreme Court held in *Inclusive Communities,* the Fair Housing Act's broad remedial purposes cannot be accomplished simply by banning intentional discrimination today. *Id.*

In addition to the statutes and court cases emphasizing the requirement of recipients of Federal housing and urban development funds and other Federal funds to affirmatively further fair housing, executive orders have also addressed the importance of complying with this requirement.[8]

B. HUD's July 16, 2015 Final Rule, HUD's 2020 Preserving Communities and Neighborhood Choice Rule, and HUD's June 10, 2021 Interim Final Rule

On July 16, 2015, the Department published a final AFFH regulation (2015 AFFH Rule) at 24 CFR 5.150 through 5.180, which required program participants to conduct and submit to HUD an Assessment of Fair Housing (AFH).[9] The 2015 AFFH Rule reflected HUD's efforts to more fully and meaningfully effectuate the AFFH mandate of the Fair Housing Act. The promulgation of the 2015 AFFH Rule was a significant and important step toward realizing the promise of the AFFH mandate.

To implement the 2015 AFFH Rule, the Department developed and required the use of Assessment Tools for different types of program participants (which were subject to public comment through the process required under the Paperwork Reduction Act), created fact sheets and guidance to assist program participants in conducting their AFHs, and provided a data and mapping tool (AFFH–T) that remains publicly available. While the promulgation of the 2015 AFFH Rule marked a substantial improvement to HUD's implementation of the AFFH mandate with respect to certain recipients of Federal financial assistance from the Department, it was not perfect, and HUD learned important lessons about how the 2015 AFFH Rule could be improved.

The required use of Assessment Tools delayed implementation of the 2015 AFFH Rule because of the need to adhere to the Paperwork Reduction Act process, which includes publication of two **Federal Register** notices and two rounds of public comment solicitation.[10] When implementation began, between October 2016 and December 2017, HUD received, reviewed, and issued initial decisions on forty-nine AFHs. HUD's experience with the implementation of the 2015 AFFH Rule highlighted some areas for improvement, including ways in which the identification of fair housing issues could be streamlined. Furthermore, due to the complexity of the assessment required and the need to adhere to the specific format required, many program participants utilized outside contractors to complete their AFHs, others misunderstood the questions asked, and some failed to identify fair housing issues or set meaningful goals to affirmatively further fair housing. Many submissions merely recounted what the HUD-provided data showed, rather than providing an analysis of the actual fair housing issues program participants' communities were and are facing. In some instances, this resulted in goals that consisted of a program participant merely continuing with actions that would maintain existing conditions rather than advancing equity for members of protected class groups and underserved communities. Similarly, the 2015 AFFH Rule's requirement that program participants identify and prioritize factors that contribute to fair housing issues (from a list of over forty potential factors) proved confusing and, in some instances, program participants were not able to translate identified factors into meaningful goals that could be reasonably expected to result in material progress.

At the same time, the 2015 AFFH Rule demonstrated that its basic planning structure had considerable promise for assisting local communities to achieve meaningful fair housing ends that are responsive to local needs. Program participants and members of the community reported that, because program participants were required to answer specific questions regarding longstanding segregation and other fair housing issues, they had productive conversations about important issues they otherwise would not have confronted. Moreover, some AFH submissions contained creative fair housing goals, including by collaborating across different sectors (*e.g.,* public housing agencies and school districts working together), to find ways to overcome disparities for protected class groups in specific geographic areas. HUD believes this demonstrates that the required focus on core fair housing topics and goal setting required by the 2015 AFFH Rule remain appropriate, even as it also heard from many stakeholders of the need for a

[8] Executive Order 12892, entitled ''Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing,'' issued January 17, 1994, vests primary authority in the Secretary of HUD for all Federal executive departments and agencies to administer their programs and activities relating to housing and urban development in a manner that furthers the purposes of the Fair Housing Act. Executive Order 12898, entitled ''Executive Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' issued on February 11, 1994, declares that Federal agencies shall make it part of their mission to achieve environmental justice ''by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.'' Executive Order 13985, ''Advancing Racial Equity for Underserved Communities Through the Federal Government'' issued on January 25, 2021, establishes that it is the policy of the Federal Government to pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. Executive Order 13985 makes clear that affirmatively advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the whole of our Government, and that doing so requires a systematic approach to embedding fairness in decision making processes, and as such, executive departments and agency must recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity. Furthermore, President Biden's Memorandum to the Secretary of HUD dated January 26, 2021, titled ''Memorandum on Redressing our Nation's and the Federal Government's History of Discriminatory Housing Practices,'' obligates HUD to examine its programs and activities and empowers the Secretary to take any necessary steps, as appropriate and consistent with applicable law, to implement the Fair Housing Act's requirements that HUD administer its programs and activities in a manner that affirmatively furthers fair housing.

[9] Prior to HUD's 2015 AFFH Rule, beginning in 1996, HUD required program participants to undertake an ''Analysis of Impediments to Fair Housing Choice,'' (AI) which was the mechanism for supporting their AFFH-related certifications. HUD issued guidance in the form of the Fair Housing Planning Guide for how to conduct an AI. HUD did not require the AI to be submitted, though HUD would review AIs in connection with compliance reviews. The 2015 AFFH Rule replaced the AI process with the AFH process.

[10] See, PRA approval process at *https://pra.digital.gov/clearance-process/.*

greater emphasis on goals and outcomes tied to a streamlined analysis. As more fully explained below, this proposed rule seeks to build on these lessons learned. HUD specifically invites comment on this proposal in Section IV of this preamble.

In 2018, HUD suspended implementation of the 2015 AFFH Rule by withdrawing the operative assessment tool that program participants were required to use for conducting an AFH. See 83 FR 23927 (Jan. 5, 2018). Then, on August 7, 2020, at 85 FR 47899, HUD promulgated a final rule—Preserving Community and Neighborhood Choice (PCNC Rule)—which repealed the 2015 AFFH Rule. The PCNC Rule redefined the AFFH mandate in a manner that was a substantial and substantive departure from decades of judicial and administrative precedent interpreting the AFFH mandate in the Fair Housing Act.

On June 10, 2021, HUD promulgated an interim final rule, ''Restoring Affirmatively Furthering Fair Housing Definitions and Certifications'' (AFFH IFR), in order to repeal the PCNC Rule and restore legally supportable definitions and certifications for program participants. See 86 FR 30779 (June 10, 2021). The AFFH IFR restored relevant definitions from the 2015 AFFH Rule and created a process for program participants to certify to HUD that they will affirmatively further fair housing. At that time, HUD did not reinstate other provisions from the 2015 AFFH Rule, but committed to further implementation of the AFFH mandate at a future date, which is the purpose of this proposed rule.

HUD invited and considered public comments on the AFFH IFR. HUD also undertook multiple listening sessions to inform this proposed rule. These listening sessions included a variety of stakeholders including HUD program participants, fair housing and civil rights advocates, community organizations, and other interested members of the public. These stakeholders provided their views about what worked and what did not with respect to the implementation of the 2015 AFFH Rule, recommended additional features and refinements that they believed a new rule should include, and identified certain fair housing- and equity-related issues prevalent in their communities that they hoped a proposed rule would address. HUD thanks these stakeholders for this valuable input and has taken it into account in formulating this proposed rule.

This proposed rule, as more fully described below, restores much of the structure of the 2015 AFFH Rule, but with modifications and improvements to increase transparency and accountability, and to reduce burden, while retaining flexibility for program participants to establish fair housing goals based on their local circumstances. The proposed rule generally tracks the structure of the 2015 AFFH Rule because HUD believes program participants are familiar with that structure; however, HUD is open to considering changes to this proposed regulatory scheme to effectively and meaningfully implement the Fair Housing Act's AFFH mandate. HUD specifically seeks comment on this topic in Section IV of this preamble.

C. HUD Proposes To Restore Much of the Structure of the 2015 AFFH Rule, While Streamlining the Required Analysis for Program Participants, and Adding Features That Will Bolster the Effective Implementation of the AFFH Rule

HUD now proposes to restore much of the structure of the 2015 AFFH Rule, while proposing modifications that HUD believes will lead to a more effective fair housing planning process while reducing burden for program participants and providing the public more transparency and opportunities to influence both planning and implementation. HUD is responsible for ensuring that the Fair Housing Act's AFFH mandate is implemented and that it drives the change that Congress intended in 1968—the undoing of vestiges of segregation, unequal treatment, and inequitable access to opportunity that the Federal Government itself helped create—and helps combat the unequal access to housing and related opportunities because of race, color, national origin, religion, sex, familial status, and disability that persists in our society today.

For change to occur throughout the Nation, HUD must help the states and localities it serves to bring it about, arming them with the relevant information and establishing a process that assists in identifying fair housing issues and then implementing meaningful actions to remedy them. To that end, the 2015 AFFH Rule created a robust and data-driven analytical scheme for program participants to use when engaging in fair housing planning and determining what actions were necessary in their local communities to affirmatively further fair housing. Under the 2015 AFFH Rule, HUD provided program participants with considerable raw data, in part through an interface known as AFFH–T that the program participants were expected to use to access data relevant to their geographic areas of analysis, and then required program participants to analyze this data in answering questions contained in the AFH Assessment Tool designed to drive the identification of fair housing issues. It was HUD's intention that the AFH Assessment Tool's User Interface would import the data from the AFFH–T. HUD now recognizes that this approach, while achieving a major step forward in fair housing planning and providing an invaluable source of publicly available data, particularly for researchers and better-resourced program participants, created some unnecessary burden and confusion particularly for smaller program participants and those with fewer resources. For instance, HUD is aware that program participants struggled to use the AFH Assessment Tool's User Interface and perform the required data-driven analysis. Accordingly, while HUD is using the 2015 AFFH Rule as a model for this proposed rule, this proposed rule streamlines the questions in the required analysis and HUD proposes to make it more user-friendly. This would enable program participants to more readily use HUD-provided data, including during community engagement, to identify fair housing issues and set goals that will result in meaningful change. HUD continues to consider whether other changes to the structure set out in the proposed rule would further reduce burden and maximize material positive change and seeks comment to that effect in Section IV, below.

HUD notes that the proposed rule is not intended to conflict with or interfere with program participants carrying out existing programmatic responsibilities including maintenance of affordable housing. It remains a top priority for HUD to preserve and maintain the existing stock of long-term affordable rental housing, including the federally assisted stock. HUD recognizes the overwhelming need for affordable and accessible housing and the inadequate supply of HUD-assisted housing to meet that need. The most recent HUD report on Worst Case Needs for Affordable Housing (issued July 2021) found there were over 7.77 million unassisted very low-income renter households facing either severe rent burden (paying more than half their incomes for rent) or severely inadequate housing conditions, or both. This does not include persons facing homelessness, nor does it include lower income (but not very low-income)

cost burdened households. HUD believes and expects that program participants can act in recognition of this urgent need to maintain and add to existing affordable and accessible housing stock consistent with the fair housing principles and requirements set forth in this proposed rule.

HUD recognizes that, notwithstanding its efforts to make refinements in this proposed rule to reduce burden and simplify the Equity Plan analysis for all program participants, some smaller program participants may benefit from additional flexibility and technical assistance. In particular, HUD is aware that small PHAs and consolidated plan participants may have significantly fewer personnel and financial resources available to complete the analysis contemplated in this proposed rule when compared to larger entities, especially if they are unable to identify another entity they can work with to submit a joint Equity Plan.

As compared to the 2015 AFFH Rule, HUD has significantly streamlined the analysis that would be required for a program participant's Equity Plan from what was required in the Assessment of Fair Housing and has eliminated the analysis of contributing factors required by the 2015 AFFH Rule. This streamlined analysis would still require program participants to assess the underlying causes of the identified fair housing issues as a basis for designing effective fair housing goals. In addition, by providing simpler, standard questions for all program participants in the regulatory text itself, HUD would not be continually revisiting those questions through revised assessment tools, which would be subject to changes under the Paperwork Reduction Act (PRA) (a Federal law discussed later in this preamble) at least every three years, thereby giving program participants long-term certainty about the analysis they would be required to undertake and reducing the burden involved in preparing subsequent Equity Plans.

Importantly, HUD has sought to design the questions, and its anticipated review of answers, such that the complexity and burden of satisfactory answers will scale based on the size of a program participant. For example, the largest PHAs (under the proposed rule, a PHA that administers 10,000 or more combined public housing and voucher units) and the largest consolidated plan participants (under the proposed rule, a program participant that receives a total of $100 million or more in formula grant funds) are likely to operate in large metropolitan areas with multiple local government entities, various categories of publicly supported housing and other affordable housing, many different types of community assets across the geographic area of analysis, and millions of community residents with significantly more complex demographic patterns. Conversely, the smallest PHAs and smallest consolidated plan participants are likely to operate in rural areas, newly suburban areas, or other localities with far fewer community assets, more limited public infrastructure, and more homogenous demographic patterns among significantly smaller populations (*e.g.,* 50,000 residents). As a result, smaller program participants, though responding to the same questions, would be expected to have less to analyze and HUD anticipates that it would be acceptable for them to provide briefer answers. As described below, in rare instances and typically with smaller program participants, program participants may respond that much or all of the question is not applicable to them, as long as this response is supported by realities on the ground, including through HUD-provided data and insights drawn from local knowledge and community engagement.

During the implementation of the 2015 AFFH Rule, HUD's efforts to address the issue of burden on small program participants by requiring simplified analyses were largely unsuccessful. HUD created inserts within the Assessment Tools for small PHAs and consolidated plan program participants but found that this process still resulted in confusion. Moreover, the smaller program participants that submitted AFHs to HUD generally either did not use the inserts or submitted essentially the same analysis as would have been required by the standard questions. Nonetheless, HUD is committed to exploring ways to further reduce the burden of preparing an Equity Plan for small PHAs and small consolidated plan program participants while ensuring that they engage in fair housing planning that is sufficient to meet their AFFH obligations. HUD solicits comment in this proposed rule on whether it should take an alternative approach for smaller program participants, including whether it should require such participants to analyze fair housing issues in a different manner.

Additionally, HUD is aware that some small PHAs (such as those that operate only Public Housing but do not participate in the Housing Choice Voucher (HCV) program, including many of those in rural areas) and some small consolidated plan participants (such as those that only receive Community Development Block Grant (CDBG) funds) may have limited ability to impact housing choice or mobility, making it harder for them to establish mobility-related goals as discussed in the definition of ''balanced approach'' in § 5.152. In those circumstances, a collaborative approach with other entities to address issues outside their control may be warranted and may allow them to set goals that would enable them to pursue a balanced approach. For example, HUD expects such small, public housing-only PHAs could undertake collaboration and outreach efforts with local governments, the private sector, non-profits, and other applicable governmental entities to address fair housing issues and formulate appropriate fair housing goals. Specific examples include working with a local government to address exclusionary zoning, coordinating with local or State agencies to increase public transportation options, addressing lead contamination or other environmental hazards, ensuring appropriate emergency response coverage, or partnering with an adjacent PHA or other larger PHAs that have HCV programs to increase mobility, including through portability programs. Similarly, small PHAs (and all PHAs as well) could review and make revisions to their PHA Admissions and Continued Occupancy Policy and other policies to positively impact underserved communities beyond fulfilling existing requirements, *e.g.,* modifying preferences or doing specific outreach to organizations that support underserved communities. Through such actions, HUD believes that even the smallest PHAs can meaningfully impact fair housing outcomes within their sphere of influence, even as it recognizes that their options and resources may be limited compared to those of larger PHAs. HUD does not propose to exempt smaller, public housing-only PHAs from efforts to use a balanced approach or their obligation to affirmatively further fair housing, but it is committed to providing guidance regarding how the AFFH obligation and the balanced approach apply when a public housing-only PHA has limited ability to directly control issues that involve mobility-related goals as discussed in the definition of balanced approach.

Nonetheless, HUD seeks comment on the extent to which smaller PHAs and consolidated plan participants can set goals that constitute a balanced approach as defined in this proposed rule, including examples of goals that such PHAs and consolidated plan

participants can appropriately and reasonably set. To the extent that commenters believe some smaller PHAs and consolidated plan participants may not be able to set goals consistent with a balanced approach, HUD seeks comment on what are appropriate expectations for smaller PHAs and consolidated plan participants that ensure that meeting their regulatory planning requirements will put them on the path to comply with their affirmatively furthering fair housing obligation.

Please see specific requests for comment in Section IV of this proposed rule related to reducing burden on small program participants.

HUD is also proposing other changes to the 2015 AFFH Rule that are designed to make the fair housing planning processes more transparent to the public and responsive to local fair housing issues. For example, HUD is considering how it can better support its program participants during the community engagement process in order to ensure that representatives from the entire community have the chance to provide their important perspectives, including members of protected class groups and underserved communities. HUD continues to consider and evaluate ways to eliminate unnecessary burden for program participants to incorporate public feedback they receive so they can develop effective goals to address local fair housing issues. HUD anticipates that the more transparent process articulated in this proposed rule for publication of Equity Plans will help reduce burden by allowing program participants to learn from and build upon the experiences of others.

HUD acknowledges that implementation of the AFFH mandate will not and cannot occur without burden for program participants, though HUD is committed to ensuring that program participants experience less burden than the 2015 AFFH Rule imposed. Under the proposed rule, program participants would continue to be required to submit certifications that they will affirmatively further fair housing in connection with documents such as their consolidated plan, annual action plan, or PHA Plan (or any plan incorporated therein), and it will continue to be HUD's responsibility to ensure that these certifications are accurate. Furthermore, HUD is committed to advancing equity for protected class groups and underserved communities, as well as assisting its program participants in doing the same. To truly honor Congress' intent, any regulation to implement the Fair Housing Act's AFFH mandate must help program participants move away from the status quo with respect to planning approaches and facilitate the development of innovative solutions to overcome decades, if not centuries, of housing-related inequality throughout American communities.

The need for change remains urgent; many of the problems the Kerner Commission Report [11] identified are still with us today, even as other barriers to equal access to housing opportunities have taken on increased attention. In particular, the Nation remains highly segregated by race, communities continue to have vastly different access to critical resources because of historic disinvestment in communities of color, there is still a large wealth gap between people of color and White persons, and the lack of choice for many about where to live persists notwithstanding that the Fair Housing Act barred discrimination based on race and other protected characteristics as a formal matter more than 50 years ago. Both anecdotal evidence and empirical research continue to demonstrate that many low-income families in all protected class groups face barriers to obtaining or keeping housing in well-resourced, low-poverty areas that provide access to opportunity and community assets, such as desirable schools, parks, grocery stores, and reputable financial institutions, among others. Ample research demonstrates that ongoing discrimination and exclusionary practices, not preferences among low-income families and members of protected class groups, drives residential and income segregation today.[12] In addition, continued disinvestment not only in housing, but in community assets in areas that are not well-resourced perpetuates this residential and income segregation.

Research also shows that this lack of choice as to where families can live has serious consequences. Children who move to low-poverty neighborhoods have increased academic achievement, greater long-term chances of success, and less intergenerational poverty.[13] Children who move to low-poverty neighborhoods have also been shown to experience lower rates of hospitalization and lower hospital spending.[14] Meanwhile, adults given the chance to move to low-poverty neighborhoods experience reductions in extreme obesity and diabetes.[15] For example, the Opportunity Atlas examines a change in the way the literature has studied and measured poverty and neighborhood conditions by looking at longitudinal information rather than snapshots in time, which allows an evaluation of the root causes of long-term outcomes by looking back at where children grew up.[16] One finding from the Opportunity Atlas suggests that if a child moves from a ''below-average to an above-average neighborhood at birth,'' it could increase the child's lifetime earnings by $200,000.[17] Another study concluded with respect to income disparities that ''initiatives whose impacts cross neighborhood and class lines and increase upward mobility specifically for Black men hold the greatest promise of narrowing the [B]lack-[W]hite gap. There are many promising examples of such efforts: mentoring programs for [B]lack boys, efforts to reduce racial bias among [W]hites, interventions to reduce discrimination in criminal justice, and efforts to facilitate greater interaction across racial groups.'' [18] Furthermore, researchers have found that even low-income individuals can have an increased life expectancy if they reside in more affluent and educated cities.[19]

For these reasons, the proposed rule requires program participants to not only identify areas that are segregated based on race and other protected characteristics, but also areas (many of

[11] *Report of the National Advisory Committee on Civil Disorders,* Mar. 1, 1968, *available at https://www.hud.gov/sites/dfiles/FHEO/documents/kerner_commission_full_report.pdf.*

[12] See for example, Bergman, Chetty, DeLuca, Hendren, Katz, and Palmer, ''Creating Moves to Opportunity: Experimental Evidence on Barriers to Neighborhood Choice,'' August 2019, *available at https://opportunityinsights.org/wp-content/uploads/2019/08/cmto_paper.pdf.*

[13] Chetty, Hendren, and Katz, ''The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment,'' *American Economic Review,* April 2016. Chetty and Hendren, ''The Effects of Neighborhoods on Intergenerational Mobility I: Childhood Exposure and II: County-Level Estimates,'' *Quarterly Journal of Economics,* 2018.

[14] Pollack, Blackford, Du, et al. ''Association of Receipt of a Housing Voucher With Subsequent Hospital Utilization and Spending,'' *JAMA,* 322(21):2115–2124. doi:10.1001/jama.2019.17432, 2019.

[15] Ludwig, Sanbonmatsu, Gennetian, et al. ''Neighborhoods, obesity, and diabetes—a randomized social experiment,'' *New England Journal of Medicine;* 365(16):1509–1519. doi:10.1056/NEJMsa1103216, 2011.

[16] Chetty, Friedman, Hendren, Jones, Porter, ''The Opportunity Atlas: Mapping the Childhood Roots of Social Mobility,'' NBER Working Paper No. 25147 (Jan. 2020), *available at https://opportunityinsights.org/paper/the-opportunity-atlas/.*

[17] *Id.*

[18] Chetty, Hendren, Jones, and Porter, ''Race and Economic Opportunity in the United States: An Intergenerational Perspective,'' *Quarterly Journal of Economics,* Vol. 135, Issue 2, 711–783 (May 2020), *available at https://opportunityinsights.org/paper/race/.*

[19] Chetty, Stepner, Lin, Scuderi, Turner, Bergeron, and Cutler, ''The Association Between Income and Life Expectancy in the United States, 2001–2014,'' *The Journal of the American Medical Association,* 315(16): 1750–1766 (2016).

them the same ones) that lack critical community assets. Such an inquiry is vital to understanding how the neighborhood where someone grows up in many ways determines their life outcomes, including for example by perpetuating significant wealth gaps and health and educational disparities and limiting the overall opportunities that person may have. This is not intended to be a burdensome inquiry. In many cases, it will be clear from local knowledge (including what is gathered through community engagement) that disparities in community assets exist.

This proposed rule also recognizes that there is a need to take a balanced approach when devising ways to overcome fair housing issues. The affirmatively furthering fair housing mandate is intended to increase fair housing choice for persons of all protected class groups, including those with limited income and economic resources. HUD also recognizes that there are often economic factors affecting fair housing choice, which include rising rents and displacement from existing housing due to gentrification. Program participants, in undertaking a balanced approach to overcome fair housing issues should consider the impact of these economic factors. Affirmatively furthering fair housing can involve both bringing investments to improve the housing, infrastructure, and community assets in underserved communities as well as enabling families to seek greater opportunity by moving to areas of the community that already enjoy better community infrastructure and community assets. Therefore, HUD's proposed rule supports program participants' choice to engage in place-based activities, such as preserving affordable housing in particular neighborhoods while making complementary investments in other infrastructure and assets in those neighborhoods, as well as those choices that promote mobility, including housing mobility programs, in order to increase access to well-resourced areas and opportunity for protected class groups that have historically been housed in underserved neighborhoods.

The proposed rule calls on program participants to identify, and over time remedy, unequal access to homeownership opportunities—which is a more direct focus than was required under the 2015 AFFH Rule—because of race, color, national origin, disability, or other protected characteristics. Inequality in access to homeownership has created a ballooning wealth gap among racial and ethnic groups. Homeownership is generally the most traditional and stable way for a family to accumulate wealth; however, this advantage has primarily been made available only to White families, even today.[20] As one researcher described the results of a 2019 study, the median White family had eight times the wealth of the median Black family and five times the wealth of the median Latino or Hispanic family.[21] It is clear that eliminating discrimination from housing-related transactions today will be insufficient to reduce the wealth gap created over many years.[22] While some efforts are underway to remedy this wealth gap, research also shows that current programs that incentivize homeownership may not be designed in a manner that would result in a closing of the wealth gap and an increase in access to homeownership opportunities for persons of color, other protected class groups, and underserved communities.[23] There are myriad ways to reimagine how homeownership incentives can be created and utilized to promote these opportunities more fairly. Evaluating how homeownership can be incentivized, including through public-private partnerships, and made a reality for members of protected class groups and underserved communities may be one way that program participants can affirmatively further fair housing, and this proposed rule explicitly creates space for them to do so.

In addition to the wealth gap, other barriers to homeownership exist for other protected class groups. For example, program participants may identify—and then set goals to remedy—a lack of accessible housing that prevents individuals with disabilities from experiencing housing choice. A 2015 analysis of 2011 American Housing Survey data found that this was a widespread challenge.[24]

[20] *See* McCargo and Choi, ''Closing the Gaps: Building Black Wealth through Homeownership,'' *Urban Institute* (2020), *available at https://www.urban.org/research/publication/closing-gaps-building-black-wealth-through-homeownership/view/full_report.*

[21] Schuetz, ''Rethinking Homeownership Incentives to Improve Household Financial Security and Shrink the Racial Wealth Gap,'' *Brookings Blueprints for American Renewal & Prosperity* (2020), *available at https://www.brookings.edu/research/rethinking-homeownership-incentives-to-improve-household-financial-security-and-shrink-the-racial-wealth-gap/.*

[22] *Id.*

[23] *Id.*

[24] Accessibility of America's Housing Stock: Analysis of the 2011 American Housing Survey (AHS), *https://www.huduser.gov/portal/publications/mdrt/accessibility-america-housingStock.html.*

D. Summary of Proposed Changes to HUD's July 16, 2015 Final Rule

a. Streamlined Analysis Will Reduce Burden

Under the 2015 AFFH Rule, program participants were required to use an Assessment Tool to conduct their Assessments of Fair Housing (AFHs). The Assessment Tool required them to address more than ninety questions and rely on HUD-provided data, local data, and local knowledge to answer all questions. The Assessment Tool also contained a list of over forty contributing factors.[25] The factors had to be identified and prioritized for each fair housing issue based on the responses to the questions and data analysis conducted.

While the Assessment Tool had the worthwhile goal of ensuring that program participants conducted a thorough analysis in accordance with a standardized process, HUD now proposes a modified approach that is intended to make it simpler for program participants to identify fair housing issues and thus allow them to focus more of the planning process on setting meaningful fair housing goals. While HUD continues to believe that an analysis and evaluation of current and historic circumstances in a program participant's community is necessary to determine appropriate fair housing goals, and that such analysis must be informed by data as well as local knowledge and community input, such objectives can be achieved without requiring program participants to undertake as much independent burden.

Accordingly, this proposed rule eliminates the required use of an Assessment Tool and instead, in § 5.154, sets out a streamlined analysis that program participants must follow to develop their Equity Plans. The required content, which is different for consolidated plan participants and PHAs, consists of fewer questions than the Assessment Tool, and HUD proposes to allow program participants to determine the format for responding to the questions. HUD believes these questions constitute the core of the fair housing inquiry that is required to identify fair housing issues, including what may be causing those issues, and set meaningful fair housing goals. HUD specifically solicits comment below on

[25] Under the 2015 AFFH Rule, a contributing factor or fair housing contributing factor was defined as ''a factor that creates, contributes to, perpetuates, or increases the severity of one or more fair housing issues. Goals in an AFH are designed to overcome one or more contributing factors and related fair housing issues. . .'' 24 CFR 5.152 (2015).

whether the questions in § 5.154 are easily understood to require this type of response and whether different or additional questions are needed. HUD believes that a more flexible format will allow program participants to tailor responses to local needs and priorities. The proposed rule still requires program participants to ground their analysis in HUD-provided data, local data, and local knowledge (including information obtained during the community engagement process), but does not require a program participant to provide a complete description of the data analyzed in response to each question. Instead, the written responses to the questions should describe the fair housing issues and their causes present in the program participant's geographic areas of analysis, and describe the key sources of information relied upon in fair housing issues and their causes sufficiently to ensure that responses are grounded in data and local knowledge.

By streamlining the written analysis, HUD believes the proposed rule will reduce burden for program participants in conducting their Equity Plans, will result in clearer and more direct identification of fair housing issues, and will allow program participants and their communities to place greater focus on the real task at hand—setting and implementing fair housing goals that are tailored to overcome the fair housing issues they collectively face. HUD also believes that the streamlined written analysis that focuses more on identifying fair housing issues and related causes will enable more program participants to establish meaningful fair housing goals that are concrete and measurable without the need for consultants and contractors.

For similar reasons, HUD is also eliminating the need to identify and prioritize factors contributing to fair housing issues as part of the required analysis within each section of the Assessment Tool provided under the 2015 AFFH Rule. While the lists of contributing factors included in the 2015 AFFH Rule's Assessment Tool were intended to help program participants set meaningful goals to remedy fair housing issues by first requiring them to identify the causes of those issues, HUD's experience in implementing the 2015 AFFH Rule showed that this step led to confusion without leading to the development or implementation of meaningful fair housing goals. Program participants are still required to assess the underlying reasons for the fair housing issues they face as part of determining the best and most effective approaches for overcoming them, though HUD believes the approach taken under the 2015 AFFH Rule did not function as initially envisioned.

Ultimately, because of this proposed rule's emphasis on outcomes, HUD believes it will be unnecessary for program participants to rely on contractors, consultants, or other experts that may be needed for a heavily data-driven written analysis. At the same time, HUD believes the simplified analysis still requires the core fair housing analysis—including engagement with the data provided by HUD—to drive meaningful goal setting.

b. Revised Fair Housing Planning Procedures Will Simplify Implementation, Reduce Burden, and Increase Transparency

This proposed rule modifies many of the procedures for how fair housing planning is implemented by program participants and their submissions reviewed by HUD compared to the 2015 AFFH Rule based on HUD's own experiences and the feedback of stakeholders regarding their experience with the 2015 AFFH Rule worked in practice.

First, while HUD's 2015 AFFH Rule was designed to provide program participants with maximum flexibility for how to collaborate on an AFH, the two different types of collaboration (joint program participants and regionally collaborating program participants) proved unnecessarily confusing. HUD is proposing to maintain the flexibilities for program participants to collaborate on their Equity Plans, while simplifying the actual procedures for those collaborations.

Second, the 2015 AFFH Rule provided for only 60 days for HUD's initial review of a submitted AFH and required program participants to have an accepted AFH for their consolidated plan, annual action plan, or PHA Plan to be approved, which in turn meant that the failure to have an accepted AFH could result in the loss of funding for program participants and their communities. In practice, this created unnecessary pressure on HUD and program participants to ensure that an AFH was accepted in a relatively short period of time to avoid risking funding that is designed to help low-income families and underserved communities. This timing also limited the extent to which HUD could work with program participants to revise a submitted plan to ensure full compliance with the rule and put program participants on a path to meaningful fair housing achievements. HUD has revised these procedures in several ways to allow a fuller review and revision process that ultimately results in compliant Equity Plans and meaningful actions by program participants that implement fair housing goals. HUD proposes to increase the review period for submitted plans from 60 to 100 days, providing HUD with more time to work with all program participants to improve their Equity Plans after submission to ensure the Equity Plan meets the regulatory requirements set forth in this proposed rule. The proposed rule provides that HUD can extend that review period for good cause. The proposed rule provides that if a program participant does not have an accepted Equity Plan, HUD may approve a consolidated plan or PHA Plan but only if the program participant furnishes special assurances that require the program participant to achieve an Equity Plan that meets the requirements of this proposed rule within 180 days of the end of HUD's review period for the consolidated plan or PHA Plan, as applicable, and that require the program participant to then amend the consolidated plan, annual action plan, or PHA Plan upon HUD's acceptance of the Equity Plan. As a result, HUD will have a clear mechanism to remedy noncompliance with the requirement to have an accepted Equity Plan, including the ability to take a range of actions (up to and including the cut-off of Federal funding where appropriate) against program participants who fail to provide or comply with such special assurances. HUD's expectation is that review of most Equity Plans will conclude with an acceptance, but the additional available procedures contained in this proposed rule provide mechanisms for HUD to take a progressive series of steps to obtain compliance in cases where this expectation is not met.

Third, while the 2015 AFFH Rule endeavored to align the AFH with program participants' other planning cycles, HUD recognizes that this approach led to difficulty for program participants in determining the date by which their AFHs were required to be submitted. This proposed rule, while still generally aligning Equity Plan cycles with other program cycles, contains clearer submission deadlines to allow program participants and the public to know with certainty when an Equity Plan will be due to HUD. Furthermore, program participants will have more time to prepare and refine their Equity Plans. HUD also expects to provide more robust technical assistance throughout the planning process. Based on this, and the changes to the required analysis explained throughout this preamble, HUD believes

it will be unnecessary for program participants to rely on contractors, consultants, or other experts that they may have chosen to use under the 2015 AFFH Rule. HUD is committed to building stronger partnerships with its program participants in order to fully implement the AFFH mandate.

Fourth, the 2015 AFFH Rule required program participants to report on their progress in subsequent AFHs—essentially, once every five years. HUD believes both that program participants should provide more regular progress updates and that they may need greater flexibility to adjust, revise, or reposition their fair housing goals on a more regular basis, particularly if program participants achieve their goals and need to establish new ones. HUD also believes that transparency around this progress evaluation is necessary to ensure that the community and members of the public are aware of the progress being made, including whether there are obstacles preventing progress from occurring. For this reason, HUD has included the requirement that, as part of their Equity Plans, program participants submit to HUD annual progress evaluations that summarize the status of the implementation of the fair housing goals. HUD does not anticipate that these progress evaluations will be long documents and expects many program participants could meet this requirement in a one- or two-page summary. HUD will also post these annual progress evaluations on its public AFFH web page to maximize the transparency of the progress being made. At the same time, the proposed rule provides a mechanism for program participants to seek revision of their established goals at these annual checkpoints.

Finally, the 2015 AFFH Rule's review process was not transparent enough to allow the public to know why HUD accepted or did not accept an AFH. This proposed rule creates a more transparent review process, pursuant to which submitted Equity Plans will be posted on HUD's AFFH web page, the public will have the opportunity to comment on submitted plans (as described further below), and HUD will publish its decisions on Equity Plan submissions. HUD believes that increasing the transparency around its review of Equity Plans will promote engagement by members of the public in the fair housing planning process and will serve to keep HUD and its program participants accountable for meeting their obligation to affirmatively further fair housing. Ultimately, HUD believes that, by having a transparent process, program participants will be better positioned to implement the fair housing goals established in their Equity Plans because their communities will be better equipped to contribute and hold program participants accountable.

c. Modified Community Engagement, Consultation, and Publication Requirements Will Increase Transparency

HUD recognizes that transparency and inclusion are necessary components of implementing the AFFH rule in a manner that ensures that the people the rule is meant to help have a significant voice in shaping outcomes. In this proposed rule, HUD offers modifications to what the 2015 AFFH Rule termed ''community participation''—in the now revised ''community engagement'' section at § 5.158—to include requirements that HUD believes are more likely to lead to broader engagement, particularly by members of protected class groups and other underserved communities who have historically been excluded from these types of discussions. The proposed rule would also require consultation with various types of organizations, such as Fair Housing Assistance Program agencies and Fair Housing Initiative Program grantees, and other groups representing underserved communities, which include organizations that advocate on behalf of individuals with disabilities such as Centers for Independent Living, Protection & Advocacy Agencies, Aging and Disability Resource Centers, and Councils on Developmental Disabilities, among others. In addition, HUD will require program participants to hold multiple community meetings, at different times of day, and in different locations throughout the jurisdiction to account for the needs of shift workers, families requiring childcare, and individuals with disabilities, among others. Ensuring that all members of a community have a say in the identification of fair housing issues and deciding how available resources are allocated is the first step toward advancing equity for everyone.

HUD intends to maintain an AFFH web page where all submitted Equity Plans will be posted for public view. The AFFH web page will include public posting of whether HUD has accepted or has not accepted a plan, as well as the annual progress evaluation that program participants submit. HUD believes that creating a central public site where all of this information can be easily viewed will improve public engagement in the planning and implementation process by enabling community members to provide HUD with additional information that may be pertinent to its review, and to hold program participants accountable for implementing the fair housing goals established in their accepted Equity Plans. HUD may publish submitted Equity Plans or portions of such plans on other HUD-maintained web pages for the purposes of disseminating best practices and in a searchable information clearinghouse to benefit program participants and the general public.

d. New Complaint and Enforcement Mechanisms Will Enhance HUD's Ability To Ensure AFFH Compliance

While the proposed rule continues to focus on planning and goal setting, HUD is proposing to add a complaint and enforcement mechanism to help ensure that program participants comply with their duty to affirmatively further fair housing. This proposed rule, at §§ 5.170 through 5.174, would permit the filing of complaints, and for HUD to open a compliance review in response to a complaint or on its own initiative, about: a program participant's failure to comply with the requirements of the proposed rule; failure to comply with an Equity Plan commitment; or any action that is materially inconsistent with the obligation to affirmatively further fair housing as defined in this proposed rule. This proposed rule would set out how HUD will investigate complaints and conduct compliance reviews and the available mechanisms for HUD to enforce compliance when a program participant is found in noncompliance and voluntary resolution cannot be obtained. HUD has modeled these procedures after existing regulations that implement Federal civil rights laws, particularly those that apply to recipients of Federal financial assistance such as title VI of the Civil Rights Act of 1964 and section 504 of the Rehabilitation Act of 1973, and therefore are familiar to program participants, all of whom are recipients of Federal financial assistance from HUD. *See* 24 CFR parts 1 (Title VI) and 8 (Section 504).

The 2015 AFFH Rule did not include any explicit mechanism for members of the public to file complaints with HUD regarding a program participant's failure to comply with the requirements of the regulation or for HUD to undertake a review of a program participant's compliance. Instead, the primary enforcement tools were HUD's ability to reject a submitted Assessment of Fair Housing or challenge a program participant's certification that it would affirmatively further fair housing. These tools alone proved to be insufficient

because they triggered drastic remedies (such as the suspension or termination of funding) that limited their practical use for ensuring compliance. HUD uses complaint and compliance review processes as one of the standard ways it ensures that program participants satisfy other civil rights obligations that attach to Federal funding and has used complaint processes in other HUD programs as a means to increase compliance. HUD proposes to establish a complaint and compliance process for AFFH, based on its experience implementing the 2015 AFFH Rule, feedback it received from stakeholders in listening sessions, the urgent need to address the systemic inequities in housing, and HUD's belief that community members are well positioned to provide important information regarding whether program participants are meeting their commitments made in the planning process and their duty to affirmatively further fair housing more generally. While HUD proposes to implement an enforcement mechanism for program participants who fail to fulfill the AFFH obligation, HUD understands that certain enforcement mechanisms such as withholding funds could have substantial impacts on consolidated plan program participants and PHAs and the people that they serve. The proposed rule would provide HUD with the ability to tailor remedies appropriately for particular circumstances. In particular, HUD does not intend to take actions that would adversely impact families participating in HUD's assisted housing programs, and is cognizant of the potential for such adverse effects from conditioning the disbursement of funds for public housing programs under section 8 or section 9. HUD would maintain a range of enforcement options that can ensure compliance, including finding a PHA in default of the Annual Contributions Contract if the circumstances require.

HUD does not intend this complaint and compliance review process to supplant the planning process as the principal means by which HUD and its program participants will implement the AFFH obligation and by which the community will have input into how AFFH compliance takes place. The proposed rule provides for public input at multiple points in the planning process, including while the program participant is developing its Equity Plan and while HUD is reviewing a submitted Equity Plan. HUD expects that interested members of the public will actively participate in the community engagement process and raise concerns in that forum about a program participant's identification of fair housing issues or establishment of fair housing goals. It also expects that any concerns the public has regarding a submitted Equity Plan will be provided during HUD's review of the Equity Plan, since the proposed rule permits members of the public to submit such information at that time. HUD will not treat information submitted regarding an Equity Plan HUD is reviewing as a complaint to be investigated; rather it will consider it as additional information that may be relevant to HUD's review of whether the Equity Plan conforms to this rule's requirements. HUD anticipates that these opportunities for the public to participate in the Equity Plan process will reduce the need to resort to the complaint process.

HUD also does not intend the complaint process to be a forum to challenge program participants' day-to-day activities that have little nexus to the AFFH obligation. Program participants are on notice of the types of actions that would be materially inconsistent with their obligation to affirmatively further fair housing because of prior guidance provided by HUD (*e.g.,* the 2015 AFFH Rule, the Fair Housing Planning Guide, the 2015 AFFH Rule Guidebook, and caselaw, including that cited above, interpreting the AFFH mandate).[26] HUD, nonetheless, also commits to providing further guidance as to the alleged conduct that HUD will accept as meriting an investigation. HUD's experience in administering other civil rights statutes with similar complaint and compliance review processes indicates that program participants will not be subject to investigations or sanctions arising from frivolous complaints regarding actions that do not actually implicate AFFH compliance. Additionally, HUD observes that the lack of an explicit administrative process that both permits the public to file complaints and authorizes HUD to investigate and take necessary corrective action has not always permitted program participants to avoid such claims. Rather, such allegations have been channeled into False Claims Act suits and other lawsuits or complaints of violations of other laws against program participants that sometimes required enforcement of AFFH in unpredictable ways. HUD has also used its authority to ensure program participant compliance with the Fair Housing Act to investigate and conciliate complaints of AFFH obligations even in the absence of an explicit process. HUD believes it will benefit program participants and the Department to have a regular and defined administrative process for its consideration of such complaints. As described below, HUD is specifically soliciting comment on how it can most effectively institute a complaint and compliance review process to provide as much notice as possible regarding the proper subjects of complaints and compliance reviews and ensure that program participants will not be subjected to frivolous complaints that are not directly tied to the program participant's obligation to affirmatively further fair housing.

e. Changes in Definitions Related to the Fair Housing Analysis Will Add Clarity to and Focus on Core Fair Housing Concepts

As described above, the proposed rule eliminates the need for a separate Assessment Tool and instead sets out the simplified fair housing analysis required of program participants. Many of the definitions in this proposed rule therefore reflect some aspects of that analysis. HUD has eliminated or modified certain definitions from the 2015 AFFH Rule in this proposed rule to provide program participants and the public greater clarity regarding what the obligation to affirmatively further fair housing encompasses and what HUD's expectations are for its funding recipients. Additionally, HUD believes that by creating these new definitions that they will provide additional information and clarity regarding this proposed rule and the topics that program participants are expected analyze. The new definitions include:

- ''Affordable housing opportunities,'' which refers to whether members of protected class groups and underserved communities have equitable access to housing that is affordable to them, including with respect to where such housing is located, whether it meets the needs of families of different sizes, whether it meets the accessibility needs of individuals with disabilities, whether it affords access to opportunity, including community assets, and whether there are factors that adversely affect access to affordable housing, specifically, but not limited to, rising rents, evictions, source of income discrimination, loss of existing affordable housing;
- ''Balanced approach,'' which refers to HUD's acknowledgement of the balancing of various approaches

[26] The Fair Housing Planning Guide and 2015 AFFH Rule Guidebook are available at the Office of Fair Housing and Equal Opportunity's (FHEO) AFFH web page *https://www.hud.gov/AFFH.*

program participants can employ when undertaking community planning and investments, which results in the balancing of a variety of actions to eliminate the housing-related disparities that result from persistent segregation or lack of integration, the lack of affordable housing in well-resourced areas of opportunity, the lack of investment in community assets in R/ECAPs and other high-poverty areas, and the loss of affordable housing to meet the needs of underserved communities. The proposed definition would make clear that both place-based and mobility strategies are part of a balanced approach necessary to achieve positive fair housing outcomes. A program participant that has the ability to create greater fair housing choice outside segregated, low-income areas should not rely on solely place-based strategies;

- ''Community assets,'' which refers to the types of assets that are often not equitably distributed and available within communities, such as high quality schools, equitable employment opportunities, reliable transportation services, parks and recreation facilities, community centers, community-based supportive services, law enforcement and emergency services, healthcare services, grocery stores, retail establishments, infrastructure and municipal services, libraries, and banking and financial institutions;
- ''Equity or equitable,'' which refers to the consistent and systematically fair, just, and impartial treatment of all individuals, including individuals who are members of protected class groups or parts of underserved communities that have been denied such treatment, as well as persons otherwise adversely affected by persistent poverty or inequality;
- ''Publication,'' which refers to how HUD will maintain web pages to publicly post Equity Plan materials to enhance transparency and provide opportunities for communities to learn from one another and benefit from the innovative thinking of others;
- ''Underserved communities,'' which refers to the remedial nature of the AFFH mandate so that groups or classes of individuals, as well as geographic communities who have historically had inequitable access to housing, education, transportation, economic, and other important opportunities, including community assets, within the program participant's jurisdiction, and HUD would require program participants to take them into account to ensure communities overcome the systemic perpetuation of inequity.

HUD believes that building these definitions and others into the proposed rule itself more directly articulates HUD's expectations for how program participants can comply with this proposed rule and the AFFH mandate than leaving such matters to a separate assessment tool as the 2015 AFFH Rule did.

f. Conforming Amendments to Program Regulations Are Necessary for Consistency With This Proposed Rule

This proposed rule contains conforming amendments to program regulations at 24 CFR parts 91, 92, 93, 570, 574, 576, 903, and 983 in order to ensure consistency between this proposed rule and the implementation of programmatic requirements for States, local governments, insular areas, and PHAs. Because HUD and its program participants are required to administer all programs and activities in a manner that affirmatively furthers fair housing, establishing consistent mechanisms in these regulatory provisions is necessary to ensure that program participants are positioned to fulfill this obligation.

E. Conclusion

The opportunity to choose where one lives free from barriers or inequities related to race, color, religion, sex, national origin, familial status, or disability is at the very heart of the Fair Housing Act's AFFH mandate. That obligation is meant to ensure that Federal money, which for too long was used to perpetuate segregation and impose discriminatory policies, is instead used to dismantle the enduring legacy of that history. This proposed rule's implementation of the Fair Housing Act's AFFH mandate requires that communities confront and commit to changing historic and ongoing discriminatory practices and policies, engage in proactive planning for the use of Federal funds to ensure funds are used equitably, and implement meaningful actions that affirmatively further fair housing. The new regulation carries forward the core planning process of the 2015 AFFH Rule, and HUD anticipates that the plans generated by this proposed rule will drive how HUD funds will be used to advance equity and affirmatively further fair housing. The proposed rule also modifies some aspects in order to make the process more user-friendly and less burdensome for program participants, and more accessible and transparent to the public. HUD's objective in this proposed rule is to provide greater support for program participants in performing the necessary analysis and otherwise meeting their obligations, while requiring more inclusion in the planning process for communities that historically have had too little say in it; more transparency for the public as to the decisions that have been made; and more regular progress reporting and opportunity to change course to reflect changed circumstances.

HUD is committed to taking active measures to work with its program participants to develop innovative and consequential ways to affirmatively further fair housing. For those program participants that take the AFFH obligation seriously, HUD anticipates that this rule will be simpler and less burdensome to follow, and that program participants will find HUD to be a helpful partner as they engage their communities and seek creative ways to remedy fair housing issues that have too long been ignored. For those that do not, HUD proposes changes that are intended to make its review process more robust and to otherwise provide for vigorous enforcement to ensure that the AFFH mandate is implemented. Based on the lessons learned from the implementation of the 2015 AFFH Rule, this proposed rule builds on that rule's successes and offers a more streamlined, effective approach to empower program participants and their communities to make informed decisions based on local circumstances to advance equity and affirmatively further fair housing.

III. Summary of Proposed Rule

This rule proposes to amend the regulations in 24 CFR parts 5, 91, 92, 93, 570, 574, 576, 903, and 983 as discussed in this section.

Affirmatively Furthering Fair Housing Regulation

This proposed rule would amend HUD regulations in 24 CFR part 5, subpart A, which contains generally applicable definitions and requirements that are applicable to all or almost all HUD programs. This rule proposes to amend existing subpart A by adding new §§ 5.150 through 5.180 under the undesignated heading of ''Affirmatively Furthering Fair Housing.'' These revised or new sections will provide the regulations that will govern how States, local governments, insular areas, and PHAs comply with their statutory obligation to affirmatively further fair housing, but reserves additional sections in subpart A for HUD to continue to provide regulations that will assist all HUD program participants in more effectively affirmatively furthering fair housing.

Affirmatively Furthering Fair Housing: Purpose (§ 5.150)

Revised § 5.150 states that the purpose of the AFFH mandate in the Fair Housing Act is to ensure that Federal funds are used in a manner to overcome the legacy of public and private policies and practices that intentionally or unintentionally have created segregated communities and inequities for people of color and other groups because of the characteristics the Act protects. The purpose of HUD's AFFH regulation is to provide program participants with an effective approach to aid program participants in identifying and taking meaningful actions to overcome historic patterns of segregation, promote fair housing choice, eliminate inequities in access to housing and related opportunities caused by policies or actions that discriminated on the basis of protected class, and foster inclusive communities that are free from discrimination. The new AFFH regulation is intended to provide a straightforward approach for program participants to advance equity in their communities using Federal financial assistance from HUD, while ensuring that HUD has a mechanism to enforce the mandate.

Affirmatively Furthering Fair Housing: Application (§ 5.151)

New § 5.151 provides the general applicability of AFFH requirements as it applies to all of HUD's programs and activities and makes clear that §§ 5.150 through 5.180 in subpart A also imposes a planning requirement on certain program participants.

Definitions (§ 5.152)

New § 5.152 provides the definitions that are used for purposes of the AFFH regulation and conforming amendments to existing program regulations. HUD has preserved and modified some of the following definitions that were included in the 2015 AFFH Rule (and in certain instances the AFFH IFR), which include ''Affirmatively furthering fair housing,'' ''Community engagement'' (formerly ''Community Participation''), ''Data,'' ''Disability,'' ''Fair housing choice,'' ''Fair housing issue,'' ''Geographic area,'' ''Integration,'' ''Local knowledge,'' ''Meaningful actions,'' ''Protected characteristics,'' ''Protected class,'' ''Racially or ethnically concentrated areas of poverty,'' ''Region,'' ''Segregation,'' and ''Significant disparities in access to opportunity.'' New terms defined in this section include ''Affordable housing opportunities,'' ''Analysis of Impediments to Fair Housing Choice,'' ''Balanced approach,'' ''Community asset,'' ''Equity or equitable,'' ''Equity Plan,'' ''Fair housing gals,'' ''Fair housing goal categories,'' ''Fair housing strategies and actions,'' ''Funding decisions,'' ''Publication,'' ''Publicly supported housing,'' ''Responsible Civil Rights Official,'' ''Reviewing Civil Rights Official,'' ''Siting decisions,'' ''Underserved communities,'' and ''Well-resourced areas.''

The definition of ''affirmatively furthering fair housing'' explains program participants' obligations under the Fair Housing Act as described throughout this preamble. This definition provides greater clarity than the definition contained in the 2015 AFFH Rule and the AFFH IFR by expressly stating that the duty to affirmatively further fair housing extends to all of a program participant's activities, services, and programs relating to housing and community development; it extends beyond a program participant's duty to comply with Federal civil rights laws and requires a program participant to take actions, make investments, and achieve outcomes that remedy the pervasive segregation and disparities the Fair Housing Act was designed to redress.

The definition of ''affordable housing opportunities'' is included in this proposed rule to assist program participants in identifying whether and in which areas of their communities members of protected class groups lack access to affordable housing opportunities. The definition also includes that the housing must comply with affordability and habitability requirements. This definition also includes the broader concept of whether members of protected class groups and underserved communities have equitable access to housing that is affordable to them, including with respect to where such housing is located and whether it affords access to opportunity, including community assets. HUD anticipates that this definition, as incorporated into the analysis required by § 5.154, will provide a connection between housing affordability, protected characteristic, and access to other opportunities, such as community assets. This definition accounts for whether housing stability for protected class groups is adversely affected by various factors, including rising rents, loss of existing affordable housing, displacement due to economic pressures, evictions, source of income discrimination, or code enforcement. This definition also contemplates that individuals with disabilities who need accessible housing have affordable housing opportunities that meet their needs in areas of their community that also afford access to opportunity. HUD notes that HUD is not changing the standard for HUD-assisted housing in program regulations with the inclusion of this definition for purposes of the Equity Plan analysis. By assessing where affordable housing is located in a community, as well as who has been successful in accessing that housing, program participants can better understand how the location of such housing, in relation to community assets, promotes integration, provides access to opportunity or is a barrier to such access, and whether there are laws, policies, or practices in their jurisdictions that may impede the provision of affordable housing in certain areas, such as well-resourced areas. With this understanding, program participants will be better positioned to set fair housing goals that can be designed and reasonably expected to result material positive change. This definition is not intended to align with HUD's programmatic requirements, and so whether housing meets this definition does not speak to whether it complies with programmatic rules.

The definition of ''Analysis of Impediments to Fair Housing Choice'' provides context for the manner in which program participants will meet their obligations to affirmatively further fair housing until such time as they are required to submit an Equity Plan to HUD.

The definition of ''balanced approach'' is added to articulate HUD's acknowledgement that different strategies for remedying fair housing issues can be employed based on the facts and circumstances specific to a program participant's community. Where a community has been starved of investment, some may want to leave for other communities, while others will want to bring those resources to bear to improve the circumstances of where they live. Accordingly, HUD has added this definition to ensure that program participants can adopt different types of strategies that will meaningfully increase fair housing choice in their communities, including by choosing from an array of place-based strategies (*e.g.,* the preservation of existing affordable housing or increased investments in community assets) and mobility strategies (*e.g.,* improved housing counseling, assessing how school assignments are made, or building affordable housing in well-resourced areas). A combination of actions will likely be necessary in most communities, which would include both place-based and mobility strategies. The proposed rule requires

that a program participant's goals, taken together, meet the definition of a balanced approach. HUD provides that place-based and mobility strategies must be designed to achieve positive fair housing outcomes (including accessibility for individuals with disabilities) and that a program participant that has the ability to create greater fair housing choice outside segregated, low-income areas should not rely solely on place-based strategies. HUD believes that the vast majority of, if not all, program participants will be able to set goals that rely on both place-based and mobility-based strategies. HUD seeks specific comment on whether this is a reasonable requirement for every program participant and, if not, the specific circumstances under which it would not be.

The definition of ''community assets'' is added to describe the sorts of high-quality assets that are characteristic of communities that have not suffered from disinvestment and that affect the quality of housing opportunities. It is meant to be a non-exhaustive but illustrative list of assets. Consideration of the location of and access to community assets, by protected class, is an integral part of the analysis of the Equity Plan, which HUD anticipates will allow program participants to be better positioned to understand the specific fair housing issues within their local communities. HUD does not intend to require analysis of community assets to be particularly burdensome and will provide data and technical assistance to support this analysis.

The definition of ''community engagement'' is included to provide program participants with a baseline understanding of what the obligation, more specifically delineated at § 5.158, entails.

The definition of ''disability'' in this proposed rule, as in the 2015 AFFH Rule, is intended to be consistent with other Federal civil rights laws with which program participants must comply, such as section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (ADA), as amended by the ADA Amendments Act of 2008. HUD incorporates by reference the definition of disability under section 504 and the ADA, consistent with the Attorney General's interpretations of that definition, see 28 CFR 35.108, for purposes of the affirmatively furthering fair housing obligation under section 808(e)(5) so as to provide consistency and clarity to HUD program participants, which are all already bound by the same definition under those statutes.

The definition of ''equity or equitable,'' which is consistent with Executive Order 13985, is intended to provide program participants with a framework for how to assess their communities in a manner that is fair, just, and impartial.

The definition of ''Equity Plan'' provides a less burdensome and more straightforward approach to fair housing planning and replaces the Assessment of Fair Housing that was required by the 2015 AFFH Rule. The Equity Plan consists of the content included in § 5.154, is submitted to HUD for review, and includes an annual progress evaluation. Program participants may submit an individual Equity Plan or may partner with other program participants to submit a joint Equity Plan, as provided for in § 5.160.

The definition of ''fair housing goals'' sets forth how program participants will overcome the fair housing issues identified in their Equity Plans. ''Fair housing goals'' are designed to go beyond the status quo in the program participant's community and result in tangible, positive, and measurable fair housing outcomes. Each fair housing goal will include a description of the fair housing issue it is designed to overcome.

The definition of ''fair housing goal categories'' details the seven categories for which program participants must establish fair housing goals to overcome fair housing issues. The purpose of this definition, and related provisions, is to help focus program participants' prioritization of which identified fair housing issues they will set goals to remedy. HUD understands that, in many cases, it will be beyond the capacity of program participants to set goals to remedy every identified issue in a single 5-year cycle. The fair housing goal categories are intended to provide program participants with a reasonable number of specific areas in which to focus their goals. Program participants may address multiple fair housing issues through a single goal, and doing so need not be difficult. Accordingly, the proposed rule does not require a goal to be set for every identified fair housing issue, but does require that a goal be set that addresses issues in each of the seven fair housing goal categories, which are outlined in § 5.154(f). HUD believes these to be at the core of the AFFH obligation.

The definition of ''fair housing issues'' is modified from the definition in the 2015 AFFH Rule and provides the substantive areas of analysis that program participants will assess in their Equity Plans before setting fair housing goals. ''Fair housing issues'' now also include such conditions as ongoing local or regional segregation or lack of integration, racially or ethnically concentrated areas of poverty, significant disparities in access to opportunity, inequitable access to affordable housing opportunities and homeownership opportunities, laws or ordinances that impede the provision of affordable housing in well-resourced areas, evidence of discrimination or violations of civil rights law or regulations related to housing, and inequitable distribution of local resources, which may include municipal services, emergency services, community-based supportive services, and investments in infrastructure.

The definition of ''fair housing strategies and actions'' helps clarify how program participants will implement the fair housing goals established in their Equity Plans, including with respect to the allocation of funding that may be necessary for purposes of achieving the fair housing goals.

The definitions of ''funding decisions'' and ''siting decisions'' refer to a set of decisions that program participants make about the allocation of HUD funds and other investments in their communities, decisions that have contributed to inequity and segregation in the past and that this proposed rule seeks to reorient in order to advance equity and undo patterns of segregation going forward.

The definition of ''geographic area'' delineates the specific levels of geographic areas of analysis that certain types of program participants must undertake when conducting the analysis required in the Equity Plan by § 5.154. These largely restate the geographic areas of analysis that were established by the 2015 AFFH Rule and the various Assessment Tools that implemented it. HUD flags that while the expected geographic area of analysis for State and insular areas includes the whole State or insular area, including entitlement and non-entitlement areas, this does not change existing requirements that restrict States to using CDBG and other Community Planning and Development funds only in non-entitlement areas.

The definitions of ''integration,'' ''segregation,'' ''racially or ethnically concentrated areas of poverty,'' and ''significant disparities in access to opportunity,'' are included because they are necessary components of the required analysis in order to set and implement meaningful fair housing goals. When appropriate, they identify cross-references to other legal standards that are also relevant to how these terms apply to specific classes protected under

the Fair Housing Act (*e.g.,* integration and individuals with disabilities).[27]

The definition of ''homeownership opportunities'' is included in this proposed rule so that program participants, in conducting their analyses, consider whether members of protected class groups have equitable access to homeownership in their jurisdictions, and if not, to determine what barriers exist to attaining homeownership so that fair housing goals can be established.

The definition of ''publication'' encompasses the posting of the Equity Plan materials for review on a HUD-maintained web page, which will facilitate transparency of the local decisions made and the HUD review process. The public will be able to track the status of HUD's review and provide feedback to HUD directly, and communities will be able to learn and benefit from the innovative ideas of others.

The definition of ''publicly supported housing'' sets forth the types of assisted affordable housing that program participants will analyze. HUD is providing data regarding the location and demographics of certain types of such housing, and program participants will also rely on local data and local knowledge for other types of assisted housing operated in the jurisdiction.

The definitions of ''Responsible Civil Rights Official'' and ''Reviewing Civil Rights Official'' clarify the Departmental official with the authority to make determinations regarding a program participant's Equity Plan and its compliance with its obligation to affirmatively further fair housing under the Fair Housing Act.

The definition of ''underserved communities,'' which is consistent with Executive Order 13985, includes groups or classes of individuals, as well as geographic communities that disproportionately include members of particular protected class groups, who have historically had inequitable access to housing and other community assets.

The definition of ''well-resourced areas'' is included to emphasize that program participants must assess which areas and whether the residents who reside in such areas have high-quality and well-maintained community assets (in view of local economic circumstances), as defined in § 5.152, which afford residents genuine access to opportunity (*e.g.,* infrastructure, high performing schools, economic opportunity, etc.) as a result of public and private investments.

Equity Plan (§ 5.154)

New § 5.154 sets forth the substantive requirement for program participants to evaluate their communities in order to more effectively affirmatively further fair housing and advance equity. This section sets forth the seven areas of analysis, which will also serve as fair housing goal categories for which program participants must establish fair housing goals. HUD seeks comment on whether it is appropriate to require every program participant to establish goals in each of the seven categories.

The process described in this section consists of fewer questions than previously required by the 2015 AFFH Rule to which program participants must respond. The specific required questions are codified in this section, but program participants have the flexibility to conduct their Equity Plan in a manner and format that best suits their local needs, so long as the required content is submitted to HUD. HUD will provide program participants with data that include maps, tables, and may include technical assistance that aids program participants in conducting their analysis. HUD will also continue to provide the existing mapping tools, first provided under the 2015 AFFH Rule, and is exploring ways to improve those offerings and provide additional relevant data. In addition, for purposes of the analysis related to access to affordable housing opportunities, HUD will continue to provide data to assist program participants in assessing disparities among protected class groups based on factors of cost burden, severe cost burden, overcrowding (particularly for large families), and substandard housing conditions. HUD believes this approach will better facilitate the discussions in communities around how to develop and implement meaningful fair housing goals. While HUD's approach under the 2015 AFFH Rule often yielded meaningful fair housing goals, HUD now understands that requiring all program participants to perform extensive data analysis themselves and show their work in a written submission (*i.e.,* requiring program participants to recite back to HUD what the HUD-provided data showed) may have impeded some program participants' ability to focus on outcomes. HUD is now proposing to simplify the required analysis and assist program participants in understanding how to use the relevant data to identify fair housing issues. This will allow program participants to place a greater emphasis on developing fair housing goals, making investment and funding decisions in furtherance of those fair housing goals, and listening to members of the community who have historically lacked equitable participation in such decisions. When establishing fair housing goals, program participants may adopt a small number of goals if such goals could ultimately result in outcomes that have a significant impact toward advancing equity for protected class groups by reducing the adverse effects of fair housing issues. HUD recognizes that fair housing goals may be short-term, in that they can be achieved relatively quickly, or long-term, in that they may take more than one funding cycle, and that program participants may set both short- and long-term goals in order to ensure that they ultimately affirmatively further fair housing.

Paragraphs (a) and (b) of § 5.154 provide the general requirement to conduct and submit an Equity Plan, including the obligation to engage the community in the development of the Equity Plan. Paragraph (b) makes clear that certain portions of the analysis may rely on local data, local knowledge, and information obtained through community engagement, particularly if HUD is unable to provide data for a specific topic required to be included as part of the analysis. Paragraph (c) provides the general content that must be included in a program participant's Equity Plan and the requirement to incorporate the Equity Plan into subsequent planning documents such as the consolidated plan, annual action plan, and PHA Plan (or any plan incorporated therein) so that program participants can appropriately allocate necessary funding for the implementation of fair housing goals. Paragraph (d) provides the specific content the Equity Plan must contain for local governments, States, and insular areas, including the questions to which these program participants must respond. The questions consist of: (1) demographics; (2) segregation and integration; (3) R/ECAPs; (4) access to community assets; (5) access to affordable housing opportunities; (6) access to homeownership and economic

[27] In 1999, the United States Supreme Court issued the landmark decision in *Olmstead* v. *L.C.,* 527 U.S. 581 (1999), affirming that the unjustified segregation of individuals with disabilities is a form of discrimination prohibited by title II of the ADA. Following the *Olmstead* decision, there have been increased efforts across the country to assist individuals who are institutionalized or housed in other segregated settings to move to integrated, community-based settings. As a result of the *Olmstead* decision and the integration mandate of section 504 of the Rehabilitation Act included in HUD's section 504 regulation at 24 CFR part 8, HUD has consistently recognized the great need for affordable, integrated housing opportunities where individuals with disabilities are able to live and interact with individuals without disabilities, while receiving the health care and long-term services and supports they need.

opportunity; and (7) local policies and practices impacting fair housing. Paragraph (e) provides the specific content the Equity Plan must contain for PHAs, including the questions to which PHAs must respond. The questions consist of: (1) demographics; (2) segregation and integration; (3) R/ECAPs; (4) access to community assets and affordable housing opportunities; and (5) local policies and practices impacting fair housing. As noted above, HUD welcomes comment on whether these questions should be modified for the purposes of small PHAs or if HUD should consider increased flexibilities PHAs can use to comply with the Equity Plan requirement or alternative approaches HUD can use to ensure that small PHAs comply with their obligations to affirmatively further fair housing.

To assist program participants in conducting their Equity Plans' analysis, HUD intends to continue providing data that program participants can rely on to answer most of the questions that guide the proposed rule's required analysis. Many program participants and others, including researchers, found the raw data HUD provided under the 2015 AFFH Rule to be invaluable. HUD is committed to continuing to provide such data, to improving its current data and mapping tools (*e.g.,* the AFFH–T Data & Mapping Tool), and to building additional tools and data products to further facilitate the fair housing analysis. For example, HUD is contemplating developing a flexible data tool for comparing the locations and demographics of publicly supported housing with patterns of segregation and R/ECAPs. A version of this tool is currently available in the AFFH–T Data & Mapping Tool, in the ''Query Tool'' option, and HUD would welcome feedback on potential improvements to this functionality. Additionally, as previously described, HUD is contemplating various ways to present this data to program participants outside the AFFH–T interface and to provide technical assistance, which may include explanations that assist program participants in understanding how to use the data to identify fair housing issues.

In addition, HUD intends to issue guidance and technical assistance on how to conduct an Equity Plan analysis and set appropriate goals. HUD intends to tailor this guidance to the various types of program participants, including State agencies and smaller and rural PHAs and consolidated planning agencies. HUD recognizes the wide range of different types of housing and community and economic development agencies that administer these vital programs at the State and local level, and that many of them have unique geographies and jurisdictional boundaries as well as unique data-related needs.

Program participants will already be familiar with several of the key Equity Plan questions. For example, HUD notes that almost all program participants will already be familiar with the analysis of disparities in access to community assets and affordable housing opportunities, including for protected class groups. To the extent the proposed rule's analysis of ''affordable housing opportunities'' overlaps with analysis already conducted for the consolidated plan, and often adopted also by PHAs, there is little additional burden on program participants in conducting this part of the analysis in the new Equity Plan. Similarly, new analysis conducted for the Equity Plan can also inform similar parts of the consolidated plan and PHA Plans. HUD recognizes that some program participants may not have direct expertise to be able to fully answer some questions in the Equity Plan analysis section, for example those asking about access to schools, transportation, or employment opportunities. HUD expects that in addition to HUD-provided data, program participants' use of local data and local knowledge, including that gathered though the community engagement process, will assist program participants with conducting these analyses.

Many of the questions are intended to be an opportunity to solicit informed feedback from the community, including local organizations that already work in these spaces, to assist the program participant in assessing disparities in access to community assets by protected class groups. HUD expects the community engagement process may be particularly helpful in consideration of certain aspects of the analysis. HUD does not anticipate that questions relying primarily on input from local data and local knowledge, which may be obtained through the community engagement process, should pose any major additional burden. As provided for in the proposed rule's definition of ''local data'' in § 5.152, the proposed rule requires consideration only of such data that ''can be found through a reasonable amount of search [and] are readily available at little or no cost.'' To provide one example, questions asking about ''underserved communities'' may not require a granular, data-driven analysis in order to identify fair housing issues. Rather, program participants are encouraged to actively engage with these communities in order to obtain the information necessary to conduct the analysis and to identify fair housing issues. This includes opening dialogues and engaging with individuals experiencing homelessness, survivors of domestic violence, people with criminal records, persons identifying as Lesbian, Gay, Bisexual, Transgender, Queer + (LGBTQ+), individuals with disabilities, and others who often have no established forum to inform local policymakers of their issues and needs.

Some of the proposed rule's questions, in asking about changes in demographics or economic trends, ask about a concept known to many stakeholders as ''gentrification.'' The term is used here because of its common colloquial use to facilitate the program participant's and community's ease of understanding the concepts at issue in order to have required discussion about community trends. HUD notes the robust debate around the term ''gentrification'' and its impact on communities in both social science research and among communities themselves, and program participants can also consider such discussions in their review. This proposed rule does not establish a HUD definition of ''gentrification,'' nor will program participants be required to precisely define the term.

For questions that ask about ''livable wage jobs,'' while HUD provides several data points that relate to employment, labor participation, and proximity to jobs, it acknowledges that the data may not capture the full picture. Program participants may have local data and local knowledge that addresses this, including information obtained from local organizations that participate in the community engagement process.

As noted above, HUD does not intend for program participants to document the performance of an extensive data-driven analysis for most questions, and instead intends for program participants to focus on effective goal setting to address identified issues. The analysis in the proposed rule is intended to facilitate a balanced approach by permitting the identification of fair housing issues susceptible to being remedied through a variety of policies. For example, if disparities by protected class group are identified in the questions regarding homeownership opportunities, responsive goals could include specific policies to assist first-time homebuyers and expand availability of affordable homeownership opportunities, such as new construction of affordable single-family homes, downpayment assistance

using the HOME Investment Partnerships (HOME) program, or zoning code reform. Similarly, an identified issue regarding lack of affordable housing opportunities in certain areas could be remedied through goals such as expanding rental availability through new placements of HOME, Housing Trust Fund (HTF), and Low-Income Housing Tax Credits (LIHTC) units, geographically targeted project-based vouchers, improved Housing Choice Voucher mobility, or addressing unnecessary regulatory barriers to affordable housing production, strengthening tenant protections, and preservation efforts.

Paragraph (f) describes how program participants must identify and prioritize the fair housing issues for each fair housing goal category. In determining how to prioritize fair housing issues within each fair housing goal category, program participants shall give highest priority to fair housing issues that will result in the most effective fair housing goals for achieving material positive change for underserved communities, taking into account that different protected class groups may be impacted by different fair housing issues. Paragraph (g) sets the requirements for fair housing goals and for including fair housing goals in the Equity Plan. This paragraph is intended to provide program participants with greater clarity on what HUD will look for when an Equity Plan is submitted for review, including whether the fair housing goals, when taken together, are designed to overcome the effects of each prioritized fair housing issue.

Broadly, the proposed rule requires program participants to set and implement fair housing goals that are designed and can be reasonably expected to result in a material positive change relating to the fair housing issues that they are intended to address. HUD expects that, in subsequent progress reports and planning cycles, program participants will be able to point to the changes that have resulted from implementation of the goals established in their Equity Plan. For example, if a program participant has identified as an issue segregation in certain areas of its jurisdiction and has set fair housing goals to reduce that segregation, it should be able to point to ways in which implementation of the fair housing goals have resulted in or are in the process of resulting in a decrease in such segregation. This does not mean that program participants must be able to report changes that are occurring with statistically significant data.

HUD recognizes that fully remedying a fair housing issue will often take substantial time and occur in incremental steps, spanning multiple funding and Equity Plan cycles. Thus, HUD expects the fair housing goals will result in material positive change even if that change will be incremental, and it will take multiple funding cycles to fully remedy the fair housing issue. For example, a program participant might set a goal in its Equity Plan to supply 100 units of affordable housing in a well-resourced area. Completing this fair housing goal might not completely remedy the underlying fair housing issues (*e.g.,* segregation) due to the size of the total population and existing segregated residential patterns in the jurisdiction and region. In such circumstances, if HUD accepts the program participant's Equity Plan and the program participant accomplishes its fair housing goal of building the 100 units, the program participant will have complied with its Equity Plan obligation, but it will still be required to set additional fair housing goals in future Equity Plan submissions to continue tackling the fair housing issue of segregation.

HUD also understands that, with respect to many fair housing issues, forces other than the program participant's actions may influence the course of change. A program participant's fair housing goal can be successful on its own terms even as it fails to accomplish material positive change in terms of the underlying issue it was designed to address. For example, a program participant might identify the lack of affordable housing in well-resourced areas as an issue and set a fair housing goal to eliminate barriers to the siting of affordable housing in well-resourced areas. It might achieve that goal by eliminating the identified barriers, and yet affordable housing is not built in the areas in question for other reasons. In such circumstances, the program participant will have satisfied its obligation with respect to that fair housing goal and will not be deemed to be out of compliance with its Equity Plan obligations. The program participant will be expected to continue to set goals in subsequent planning cycles to address the still existing fair housing issue in ways that will accomplish the required material positive change.

Paragraph (h) consists of additional content that is required for the Equity Plan, including the community engagement process and the submission of certifications and assurances. Paragraph (i) provides for program participants and their communities to engage in an evaluation of progress toward advancing equity following the acceptance of the Equity Plan. For each Equity Plan submitted following the first Equity Plan, program participants are permitted to provide their annual progress evaluations in the aggregate as part of the overarching progress evaluation required for each new Equity Plan. Paragraph (j) provides for the publication requirement of the Equity Plan, which HUD will facilitate, in order to increase transparency and allow for program participants and the public to view all Equity Plan submissions and view the Department's decisions regarding such plans. This will allow communities to discover and consider the innovative ideas and strategies other communities may be employing to advance equity in meaningful ways. This paragraph also provides for a mechanism for the public to submit information to HUD regarding the content of a published Equity Plan.

Affirmatively Furthering Fair Housing Through Equity Plan Incorporation Into Subsequent Planning Documents (§ 5.156)

New § 5.156 more closely and directly ties the fair housing goals established in the Equity Plan to the subsequent planning processes program participants are required to undertake to ensure that program participants adequately and appropriately undertake and fund programs, services, and activities in a manner that advances equity and affirmatively furthers fair housing. This will provide a more holistic approach to the implementation of the AFFH mandate by requiring program participants to embed fairness and equity into their decision-making processes.

Community Engagement (§ 5.158)

New § 5.158 sets forth the requirements for community engagement as a key component of the development of the Equity Plan. This section, along with conforming amendments to applicable program regulations, provides program participants the flexibility to conduct this process differently from how they conduct citizen participation for the consolidated plan or annual action plan or the policies and procedures PHAs use for the PHA Plan if they so choose. Program participants' engagement with their communities in the development of the Equity Plan requires the confrontation of difficult issues, and so HUD is providing program participants with flexibility to determine how best to facilitate those important conversations. HUD expects the community engagement process to focus on the fair housing issues facing communities, and

HUD further anticipates that by providing data, guidance, and technical assistance to program participants regarding the fair housing issues demonstrated by HUD-provided data, this focus on community engagement as a source of critical information can be more easily maintained. The community engagement process is intended to be a robust discussion across all sectors of the community so that program participants can make informed choices about how to overcome existing fair housing issues, such as barriers to fair housing choice, and make equitable funding decisions. This section also provides the Federal civil rights requirements with which program participants must comply when conducting in community engagement and permits program participants to utilize the processes in their respective program regulations to undertake these activities.

Submission Requirements (§ 5.160)

New § 5.160 provides the requirements for the submission of the Equity Plan to HUD, including how program participants may collaborate to submit a joint Equity Plan to HUD, and provides the timeframes for when a program participant's first Equity Plan will be due. The timeframes for the first Equity Plan in this section are intended to be straightforward and easily discernable so that program participants have certainty as to when their obligation to conduct and submit an Equity Plan is triggered. This section also provides for how and when annual progress evaluations will be submitted as well as subsequent Equity Plans. Further, until such time as an Equity Plan is due to HUD, program participants must ensure they are engaging in fair housing planning in a publicly transparent way and this section sets forth how to meet that obligation.

Paragraph (a) allows program participants to collaborate and conduct an Equity Plan (joint Equity Plan) with other program participants (joint program participants), which may allow program participants to pool resources in order to overcome fair housing issues that cross jurisdictional lines. This paragraph sets out the requirements for how program participants collaborate and the obligations of each collaborating participant, as well as notification to HUD of the intent to collaborate on an Equity Plan.

Paragraph (b) sets out the submission deadlines for consolidated plan program participants. These deadlines are tied to the aggregate amount of formula funding the program participant receives from HUD and then is further keyed to the program year that begins on or after a particular date. This paragraph thereby creates a tiered submission schedule, in which the first group of consolidated plan program participants that have an Equity Plan due will be all among the largest such participants. HUD anticipates that this group is better positioned to begin implementation, and the experiences of this first cohort will allow for program participants of different sizes to benefit from technical assistance from HUD during the course of implementation of this proposed rule. Likewise, paragraph (c) sets out the submission deadlines for PHAs based on the aggregate number of units and vouchers the PHA administers, which are then keyed to the program year that begins on or after a particular date. The first cohort of PHAs with an Equity Plan due will also be among the largest PHAs, and their experience will allow PHAs of different sizes to benefit from technical assistance from HUD in advance of an Equity Plan submission.

Paragraph (d) requires, until such time as a program participant must submit an Equity Plan to HUD, that the program participant engage in fair housing planning and sets forth how to meet this obligation, including what must be submitted to HUD and when such submissions are required.

Paragraph (e) provides for the procedures that HUD will utilize in order to determine when an Equity Plan is due for new program participants. Paragraph (f) sets out the requirements for submitting annual progress evaluations as part of the Equity Plan. Paragraph (g) specifies the deadlines for subsequent Equity Plan submissions. Paragraph (h) provides that program participants must submit an Equity Plan to HUD no less frequently than every five years.

Paragraph (i) requires program participants to include certifications and assurances as part of the Equity Plan submission to HUD. These certifications and assurances are distinct from those submitted in connection with an application for Federal financial assistance.

Review of Equity Plan (§ 5.162)

New § 5.162 provides the procedures and standard HUD will use to review submitted Equity Plans. This provision sets forth the timing for HUD's review and what may occur as a result of HUD's review—HUD may accept the Equity Plan, extend the time for review for good cause, or provide notice to the program participant that HUD does not accept the Equity Plan and the reasons why. Specifically, HUD will have 100 calendar days from the date the Equity Plan is submitted to review the plan. HUD's acceptance of an Equity Plan is not a determination of whether the program participant has met its obligation to affirmatively further fair housing under the Fair Housing Act and means only that the program participant's submission appears to meet the requirements of this proposed regulation.

Paragraph (a) sets out the process for review and what HUD's acceptance of an Equity Plan means. Paragraph (b) sets out the standard HUD will apply when determining to accept or not to accept an Equity Plan—HUD will not accept the Equity Plan if any portion of it is inconsistent with fair housing or civil rights requirements, which includes but is not limited to any material noncompliance with the requirements of §§ 5.150 through 5.180. This paragraph provides examples of reasons why HUD will not accept an Equity Plan. In the event an Equity Plan is not accepted, paragraph (c) sets out the procedures for program participants to revise and resubmit their Equity Plan to HUD. Paragraph (d) provides ways HUD, at its discretion, can incentivize and support program participants that establish ambitious fair housing goals in their Equity Plans including for example assisting program participants in securing additional resources for implementing their fair housing goals and achieving positive fair housing outcomes in their communities.

Paragraph (e) explains the procedures for when a program participant does not have an accepted Equity Plan at the time their consolidated plan or PHA Plan, as applicable, must be submitted to HUD. As explained above, the proposed rule provides that a consolidated plan or PHA Plan (or any plan incorporated therein) may be accepted under such circumstances, but only if a program participant provides special assurances that it will submit an Equity Plan that meets the regulatory requirements within 180 days of the end of HUD's review period for the consolidated plan or PHA Plan. HUD notes that failure to provide such special assurances will lead to the disapproval of the applicable programmatic plan. If the Secretary determines that there has been a failure to fulfill the terms set out in the special assurances, the Secretary will initiate the termination of funding, refuse to grant or to continue to grant Federal financial assistance, or seek other appropriate remedies. In addition, paragraph (e) explains that a program participant's failure to provide or comply with special assurances can provide the Secretary a basis to

challenge the validity of the program participant's AFFH certification pursuant to § 5.166. Finally, paragraph (e) specifies that the procedures HUD will follow if there is a failure to comply are at § 5.172 and that the special assurances are subject to the publication requirement and will be made available on HUD's AFFH web page.

Revising an Accepted Equity Plan (§ 5.164)

New § 5.164 sets out the minimum criteria for when an Equity Plan must be revised—that is, when a material change occurs, upon written notification from the Responsible Civil Rights Official (Assistant Secretary for Fair Housing and Equal Opportunity or his or her designee) specifying a material change that requires the Equity Plan to be revised, or a program participant chooses to revise its Equity Plan. Paragraph (a)(1)(i) provides examples of what a material change would include, such as Presidentially declared disasters under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. A material change may occur because the program participant's jurisdiction receives additional Federal financial assistance, new fair housing issues emerge in the program participant's jurisdiction, significant demographic changes occur in the program participant's jurisdiction, or civil rights findings, determinations, settlements (including Voluntary Compliance Agreements), or court orders occur. Paragraph (a)(1)(ii) specifies that the Responsible Civil Rights Official may notify program participants in writing that a material change has occurred that requires revision. Paragraph (a)(2) sets out the circumstances under which a program participant may choose to voluntarily revise its previously accepted Equity Plan, with permission from HUD. HUD intends that this provision be used by program participants who face changed circumstances that make it difficult or impossible to meet established fair housing goals or otherwise require revisions to their Equity Plans. HUD does not intend this provision to be used by program participants that simply fail to accomplish the fair housing goals they established. Paragraph (a)(3) sets out the requirements for a revised Equity Plan. Paragraph (b) establishes the timeframes that will apply when revising an Equity Plan, paragraph (c) requires the revised Equity Plan to be submitted to HUD for review, and paragraph (d) requires that, once a revised Equity Plan has been accepted by HUD, the program participant incorporate any revised fair housing goals into their consolidated plan, annual action plan, PHA Plan or any plan incorporated therein within 12 months of the date of HUD's acceptance of the revised Equity Plan.

AFFH Certifications Required for the Receipt of Federal Financial Assistance (§ 5.166)

New § 5.166 requires program participants to provide certifications as part of the submission of their required consolidated plan, annual action plan, or PHA Plan, or any plan incorporated therein, pursuant to 24 CFR parts 91 and 903, as applicable, that they will affirmatively further fair housing in order to receive Federal financial assistance from HUD.

Paragraph (a) of this section requires a certification that program participants will affirmatively further fair housing and take no action that is materially inconsistent with fair housing and civil rights requirements throughout the period for which Federal financial assistance is extended. These certifications are made in accordance with applicable program regulations, specifically 24 CFR part 91 for consolidated plan program participants and 24 CFR part 903 for PHAs.

Paragraph (b) sets out the policies and procedures for when and how the Department will challenge the validity of an AFFH certification. HUD will endeavor to voluntarily resolve any potential inaccuracy or noncompliance with an AFFH certification that could result in the disapproval of a consolidated plan, annual action plan, or PHA Plan, and it expects recipients of Federal financial assistance to work cooperatively with the Department to reach voluntary resolution when there is a potential failure to comply with an AFFH certification or the obligation to affirmatively further fair housing. In the event this does not occur, this paragraph sets out the procedures HUD will use. This paragraph also sets forth how the process will work if there is evidence the program participant's certification is inaccurate. For example, if the noncompliance cannot be voluntarily resolved, HUD may set conditions on a grant for a consolidated planning program participant (see *e.g.,* 2 CFR 200.208) or reject the AFFH certification. This paragraph also specifies how certifications may be challenged in the context of joint Equity Plans with respect to one program participant, but not necessarily all joint program participants.

Recordkeeping (§ 5.168)

New § 5.168 requires program participants to maintain sufficient records that would enable the Responsible Civil Rights Official to determine whether the program participant has complied with or is complying with their AFFH obligations. This provision permits access to records by the Responsible Civil Rights Official to make such a determination and sets out examples of the types of records program participants should maintain in order to demonstrate their compliance with this proposed rule. By providing examples of the types of records HUD would expect program participants to maintain, HUD is providing notice to program participants about how to best demonstrate their compliance to HUD.

Compliance Procedures (§ 5.170)

New § 5.170 creates a process that allows members of the public to submit information to HUD alleging that a program participant has failed to comply with this proposed rule or its Equity Plan, or that the program participant has taken action that is materially inconsistent with its obligation to affirmatively further fair housing, as defined in this proposed rule. It then provides that, in response to such a complaint or of its own accord, HUD may initiate an investigation to determine the program participant's compliance following procedures consistent with existing processes used for other Federal civil rights statutory and regulatory requirements accompanying the receipt of Federal financial assistance, such as title VI of the Civil Rights Act of 1964 and section 504 of the Rehabilitation Act of 1973. *See* 24 CFR parts 1 (Title VI) and 8 (Section 504).

As described above, HUD does not intend the complaint process to be used to relitigate decisions made by program participants in the planning process after opportunity for community input and HUD's acceptance of an Equity Plan. HUD specifically seeks comment on how it can effectively implement a complaint and compliance review process that works in tandem with the proposed planning process including specific regulatory text that would be in accord with these principles. HUD also seeks comment on whether and the extent to which setting out an AFFH complaint and compliance review process is likely to facilitate AFFH compliance. HUD recognizes that any investigation creates some burden on program participants and seeks comment on ways HUD can minimize the burden associated with an investigation while maintaining a mechanism for effectively enforcing the Fair Housing Act's AFFH mandate.

Paragraph (a)(1) provides for submission of complaints and describes the permissible subject matter of such complaints. A complaint must allege the failure to comply with a specified requirement of this proposed rule; a failure to meet specific commitments a program participant has undertaken in the Equity Plan; or that the program participant has acted or is acting in a manner that is materially inconsistent with its obligation to affirmatively further fair housing, as defined in this regulation. This subject matter restriction is intended to make clear that HUD does not view the complaint process as a vehicle for general complaints about the activities of HUD program participants that lack nexus to the AFFH requirement.

With respect to allegations that a program participant is failing to meet its Equity Plan commitments, HUD understands that accomplishing the goals set out in Equity Plans will not always happen immediately. Accordingly, the complaint process should not be used to attempt to micromanage the pace and manner in which they are accomplished, so long as program participants are continuing to make efforts to comply. Similarly, a program participant's inability to meet an Equity Plan commitment because of circumstances beyond its control will not be treated as a violation, though the program participant will be expected to disclose those circumstances in its annual progress evaluation and should seek to modify the relevant portion of its Equity Plan. With respect to claims that a program participant is acting in a manner that is materially inconsistent with its AFFH obligation, that standard is intended to mirror the certification that program participants make regularly that they will take no action materially inconsistent with that obligation. It is not intended to create any new substantive requirement for program participants, but rather to provide a manageable and predictable process to investigate and enforce compliance with the existing AFFH obligation in a manner that does not necessarily require HUD to challenge the validity of the certifications submitted in connection with the receipt of Federal financial assistance. There is no requirement that each individual action program participants take be in furtherance of the AFFH obligation, but rather program participants' actions must collectively affirmatively further fair housing and they may not take actions that are materially inconsistent with their obligation to affirmatively further fair housing. Therefore, it generally would be insufficient for a complainant to allege that a routine decision made or routine action taken by a program participant does not affirmatively further fair housing. HUD seeks comment on whether it should further clarify the scope of permissible complaints, including by reference to specific examples of subject matter that would or would not be the appropriate basis of a complaint.

Paragraph (a)(2) further describes the procedures HUD will utilize when a complaint regarding a program participant's obligation to affirmatively further fair housing is received. Paragraph (a)(3) provides that complaints shall be filed within 365 days of the date of the last incident of the alleged violation, unless the Responsible Civil Rights Official extends the time limit for good cause, such as where the complaint concerns an alleged violation that took place more than a year previously but was not disclosed to the public until more recently.

Paragraph (b) sets forth the procedures HUD will utilize when it initiates an investigation of either a complaint filed with the Department or a review initiated by the Department, in order to ascertain whether there has been a failure to comply with the program participant's obligation to affirmatively further fair housing. Paragraphs (b)(1) and (2) provide that the Responsible Civil Rights Official will provide notice to the program participant of the investigation, and may conduct interviews, request records, and obtain other information required to determine whether there has been a failure to comply. Paragraph (b)(3) provides that the Responsible Civil Rights Official shall attempt informal resolution where appropriate. In doing so, HUD will be mindful that program participants may have multiple ways available to them to remedy an alleged violation. While HUD believes it is helpful to provide a program participant with suggested remedies to facilitate discussions of appropriate resolutions, it does not intend to be prescriptive about the remedy a program participant ultimately agrees to so long as it is adequate to address the alleged violation. Paragraph (b)(3) also sets out the process that will occur if an informal resolution with the program participant cannot be achieved and a violation is found—the Responsible Civil Rights Official will issue a Letter of Findings. Paragraphs (b)(4) through (6) set out the required contents of a Letter of Findings, including findings of facts and conclusions of law, a description of a remedy for each violation found, and notice of the rights and procedures under §§ 5.172 and 5.174, which include the right of the program participant or complainant (if any) to request review of the Letter of Findings within 30 calendar days from the date of issuance and the procedures for such a review.

Paragraph (c) provides that the mechanism for informal resolution of matters is through either the execution of a Voluntary Compliance Agreement between the program participant and HUD, which may occur at any stage of processing of the matter, or, in appropriate circumstances, the Responsible Civil Rights Official may seek, in lieu of a Voluntary Compliance Agreement, assurances or special assurances of compliance.

Paragraph (d) makes it a violation of this proposed rule for a program participant or other person to intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by this proposed rule or the Fair Housing Act because of testimony, assistance, or participation in any manner in the filing of a complaint, an investigation, proceeding, or hearing under §§ 5.150 through 5.180. HUD takes seriously allegations of retaliation and will investigate such claims.

The provisions above are largely modeled on existing HUD regulations with respect to complaints regarding and enforcement of civil rights requirements that attach to the receipt of Federal financial assistance, such as Title VI and Section 504. HUD has used those regulations as a model because they are familiar to HUD and to program participants. HUD seeks comment on whether any modifications to these procedures are appropriate for purposes of considering alleged violations of the AFFH obligation.

Procedures for Effecting Compliance (§ 5.172)

New § 5.172 sets forth the procedures HUD will follow when informal or voluntary resolution through a Voluntary Compliance Agreement cannot be achieved. Paragraph (a) provides the non-exhaustive list of ways in which the Responsible Civil Rights Official may effect compliance, which include: a referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce the rights of the United States under any law of the United States, or any assurance or contractual undertaking (which includes the assurances and certifications made in connection with grant agreements and

the requirements of this proposed rule); the initiation of an administrative proceeding by filing a Complaint and Notice of Proposed Adverse Action pursuant to 24 CFR 180.415, which may seek the suspension or termination of or refusal to grant or to continue to grant Federal financial assistance along with any other appropriate relief to remedy the noncompliance with this proposed rule; the initiation of debarment proceedings pursuant to 2 CFR part 2424; and any applicable proceeding under State or local law. This paragraph incorporates the familiar and longstanding mechanisms that HUD uses to effect compliance with fair housing and civil rights requirements by recipients of Federal financial assistance.

Paragraph (b) provides for the remedies that will be available to the Department if a program participant fails or refuses to furnish an assurance required under § 5.160(i), § 5.162(e), or § 5.170(c), or if the program participant otherwise fails to comply with the requirements of this proposed rule. Specifically, in these circumstances, the Department may seek to terminate, refuse to grant, or not continue Federal financial assistance. Paragraph (c) further details the predicate steps that must occur prior to an order suspending, terminating, or refusing to grant or continue Federal financial assistance becomes effective. These procedures are intended to ensure that program participants', as recipients of entitlement grants from HUD, due process rights are satisfied prior to any termination, suspension, or refusal to grant or to continue to grant Federal funds. Like those in paragraph (c), the procedures in paragraph (d) are the same procedures that exist under the other Federal civil rights statutes requiring compliance by recipients in connection with the receipt of Federal funds. As drafted in this proposed rule, these procedures are written in a manner to give program participants greater clarity as to how this process will be operationalized. Furthermore, Paragraph (d) ensures that HUD will provide appropriate and proper notice to the State or local government official when the Secretary determines that a recipient of Federal financial assistance under title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301–5318) has failed to comply with this proposed rule. This notice is intended to safeguard the due process rights of recipients and is consistent with regulatory and statutory requirements of the Community Development Block Grant program.

Hearings (§ 5.174)

New § 5.174 describes the procedures for administrative hearings that HUD will follow should it need to effect compliance by filing a Complaint and Proposed Notice of Adverse Action pursuant to 24 CFR 180.415 before HUD's administrative law judges. These procedures are consistent with the hearing procedures contained in other regulatory schemes implementing the Federal civil rights laws, such as title VI of the Civil Rights Act of 1964 and section 504 of the Rehabilitation Act of 1973. They should be familiar to both HUD and program participants and are generally governed by HUD's regulation on Consolidated HUD Hearing Procedures for Civil Rights Matters at 24 CFR part 180. However, this provision is included to ensure that program participants understand the procedures that would be applicable.

Conforming Amendments Consolidated Plan Regulations (24 CFR Part 91)

Because the AFFH regulation in 24 CFR part 5 builds on existing consolidated plan regulations with respect to the community engagement process, the obligation to incorporate fair housing goals from the Equity Plan into subsequent planning documents, the submission of certifications, and procedures for effecting compliance with this proposed rule, conforming amendments to the consolidated plan regulations must be made to reflect the incorporation of the Equity Plan process into the consolidated planning process.

Applicability (§ 91.2)

This section specifies that all programs covered by the consolidated plan must comply with the requirements to affirmatively further fair housing.

Definitions (§ 91.5)

Section 91.5, the definition section of HUD's consolidated plan regulations, would be revised to reflect that the term ''Equity Plan'' is defined in 24 CFR part 5.

Consultation; Local Governments (§ 91.100)

Section 91.100 of HUD's consolidated plan regulations would be amended to account for the community engagement process and procedures required for the development of the Equity Plan pursuant to § 5.158.

Paragraph (c) of § 91.100, which requires the local government to consult with the local PHA, would be amended to provide that the jurisdiction must also consult with the PHA regarding the Equity Plan, including affirmatively furthering fair housing strategies and meaningful actions that will implement the fair housing goals from the Equity Plan.

The proposed rule adds a new paragraph (e) to § 91.100 to address the requirement to affirmatively further fair housing. Paragraph (e) provides that the local government shall consult with community- and regionally-based organizations that represent protected class members or enforce fair housing laws, such as state or local fair housing enforcement agencies, including participants in the Fair Housing Assistance Program (FHAP), fair housing organizations and other non-profit organizations that receive funding under the Fair Housing Initiative Program (FHIP), and other public and private fair housing service agencies, to the extent such entities operate within its jurisdiction.

As noted in paragraph (e), this consultation will help provide a better basis for the local government's Equity Plan, its certification to affirmatively further fair housing and other portions of the consolidated plan concerning affirmatively furthering fair housing. Paragraph (e) provides that the consultation required under this paragraph can occur with any organizations that have the capacity to engage with data informing the Equity Plan and are sufficiently independent and representative to provide meaningful feedback to a jurisdiction on the Equity Plan, the consolidated plan, and their implementation. A Fair Housing Advisory Council or similar group that includes community members and advocates, fair housing experts, housing and community development industry participants, and other key stakeholders can meet this critical consultation requirement.

The proposed rule requires consultation to occur throughout the fair housing planning process, meaning that the jurisdiction will consult with the organizations described in this section in the development of both the Equity Plan and the consolidated plan. The AFFH-related consultation on the consolidated plan shall specifically seek input into how the fair housing goals identified in the accepted Equity Plan will be incorporated into the consolidated plan, including funding allocations. This community input and consultation is critical to ensure that the jurisdiction is meeting the fair housing needs of the community through the implementation of the fair housing goals

from the Equity Plan into the consolidated plan.

Citizen Participation Plan; Local Governments (§ 91.105)

This section is amended to provide program participants with the option to incorporate and include the community engagement requirements from § 5.158 for the development of the Equity Plan into the requirements governing the local government's citizen participation plan, should the program participant decide to do so. While reference to the Equity Plan is made throughout § 91.105, the amendments to specifically note are as follows:

Paragraph (a)(1) distinguishes the citizen participation plan required for purposes of the consolidated plan from the community engagement requirements of § 5.158 for purposes of the Equity Plan. This paragraph provides jurisdictions with the flexibility to include the policies and procedures it will undertake for purposes of the Equity Plan in the citizen participation plan, so long as all requirements for community engagement contained in §§ 5.150 through 5.180 are included in the citizen participation plan; however, this paragraph does not require program participants to amend their citizen participation plans should they choose to undertake community engagement for purposes of the Equity Plan separate from citizen participation for purposes of the consolidated plan.

Paragraph (a)(2)(i) of this section would be amended to add explicit reference to residents and other interested parties, including members of protected class groups that have historically been denied equal opportunity and underserved communities, that are encouraged to participate in the development of the Equity Plan and revisions to the Equity Plan, along with participation in the development of the consolidated plan and substantial amendments to the consolidated plan.

Paragraph (a)(2)(ii), which encourages the participation of local and regional institutions, would be amended to reflect that such participation is not only important to the consolidated plan but to the Equity Plan as well.

Paragraph (a)(2)(iii), which addresses consultation with PHAs, would be amended to include how the jurisdiction will consult with the PHA regarding the jurisdiction's Equity Plan and how the jurisdiction will affirmatively further fair housing through implementation of its fair housing goals from the Equity Plan.

Paragraph (a)(2)(iv) of this section, which encourages the jurisdiction to explore alternative techniques to encourage public engagement in the development of the consolidated plan and Equity Plan would be amended to note that, to the extent the jurisdiction includes the community engagement requirements for the Equity Plan in its citizen participation plan, the techniques described must be consistent with the requirements at § 5.158, including the nondiscrimination requirements detailed in that section.

Paragraph (a)(3) would be amended to ensure jurisdictions meet their civil rights obligations when seeking comment on proposed plans, particularly with respect to individuals with disabilities and limited English proficient (LEP) residents of the community.

Paragraph (a)(4) would be amended to set forth how the requirements of paragraph (a)(3) apply to the Equity Plan's development for purposes of providing language assistance to ensure meaningful access to participation by LEP residents.

The proposed rule adds new paragraph (a)(5) to detail for jurisdictions how to meet their obligation to ensure effective communication with persons with disabilities during the development of the consolidated plan and Equity Plan. These requirements are consistent with those contained in the implementing regulations for section 504 of the Rehabilitation Act and title II of the Americans with Disabilities Act.

Paragraph (b) of § 91.105 would be amended to provide that to the extent the program participant includes the Equity Plan and the requirements of § 5.158 in their citizen participation plan, those requirements would be in addition to the requirements for the consolidated plan, which are described in paragraph (b)(1).

Paragraph (c) of § 91.105 would be amended so that the local government must specify the criteria the local government will use for determining when revisions to the Equity Plan will be appropriate, and provides that, at a minimum, the local government's criteria must include the criteria specified in 24 CFR 5.164, if the Equity Plan is included in the citizen participation plan.

Paragraph (e) of § 91.105 would be amended to address the existing requirement for the number of public hearings to hold on the jurisdiction's consolidated plan and how those requirements differ from what is required for the development of the Equity Plan pursuant to § 5.158.

Paragraphs (f), (g), (i), and (j), would each be revised to reference the Equity Plan and the applicable fair housing and civil rights requirements for conducting meetings and making documents publicly available. In addition, paragraph (j) would be amended to explain that the complaint procedures the jurisdiction establishes in the citizen participation plan are applicable to the consolidated plan and are distinct from the processes that apply to the Equity Plan set forth at §§ 5.158(i) and 5.170.

Consultation; States (§ 91.110)

This section would be revised to provide for the Equity Plan to be subject to the same consultation requirements as State consolidated plans. Two new paragraphs would be added to paragraph (a) of this section.

Paragraph (a)(1) would specifically address consultation pertaining to public housing, with the objective to ensure that the PHA Plan is consistent with the consolidated plan, including with respect to the fair housing goals established in the Equity Plan.

Paragraph (a)(2) would address consultation pertaining to affirmatively furthering fair housing, with the objective to ensure that there is a meaningful Equity Plan.

Citizen Participation Plan; States (§ 91.115)

References to the Equity Plan would be added to paragraphs (a)(1) and (2) of this section. The amendments to this section include the revisions to paragraphs (a)(3) and (4) that would require reasonable efforts to provide language assistance to LEP residents and adding new paragraph (a)(5) that requires ensuring effective communication with persons with disabilities, as required by section 504 of the Rehabilitation Act and title II of the Americans with Disabilities Act, and their respective implementing regulations.

Paragraph (b) of this section, which addresses development of the consolidated plan, would be amended to address development of the Equity Plan in addition to the consolidated plan, to the extent the State decides to include the Equity Plan in its citizen participation plan.

Paragraphs (f) and (h) of this section, which address availability of information to the public's access to records, and complaints, respectively, would be amended to reference the Equity Plan. Paragraph (h) would also be revised to make clear that the complaint process in the State's citizen participation plan is distinct from the

processes that apply to the Equity Plan set forth at §§ 5.158(i) and 5.170.

Strategic Plan (§ 91.215)

This section of the consolidated plan regulations describes the prescribed content of the local government's strategic plan. This proposed rule adds to this section a new paragraph (a)(5) that requires the jurisdiction's consolidated plan to describe how the priorities and specific objectives of the jurisdiction will affirmatively further fair housing, and that the description should be done by setting forth strategies and actions consistent with the goals and other elements identified in an Equity Plan conducted in accordance with § 5.154. New paragraph (a)(5) provides that for issues not addressed by these priorities and objectives, the plan must identify how these goals have been incorporated into the plan consistent with the requirements of §§ 5.150 through 5.180.

Action Plan (§ 91.220)

This section of the consolidated plan regulations lists the items that comprise a local government's action plan. Paragraph (k) of § 91.220 is divided into two paragraphs. Paragraph (k)(1) requires the action plan to address the actions that the local government plans to take during the next year to address fair housing issues identified in the Equity Plan. Paragraph (k)(2) addresses the existing provision of paragraph (k), which is the requirement of the local government to list the actions that it plans to take to address, among other things, obstacles to meeting underserved needs, and fostering and maintaining affordable housing.

Paragraph (l) of this section, which sets forth the program-specific requirements, would be revised to include references to the Equity Plan and the fair housing goals incorporated from the Equity Plan for purposes of how they relate to each program covered by the Action Plan.

Certifications (§ 91.225)

The proposed rule would amend paragraph (a)(1) of this section to require the local government's certification that it will affirmatively further fair housing and it will take no action that is materially inconsistent with fair housing and civil rights requirements throughout the period for which Federal financial assistance is extended.

Monitoring (§ 91.230)

The proposed rule revises this section to provide that a local government's monitoring of its activities carried out in furtherance of the consolidated plan, must include monitoring of strategies and actions that address the fair housing issues identified in the Equity Plan.

Special Case: Abbreviated Consolidated Plan (§ 91.235)

Paragraph (c) of this section, which defines what is an abbreviated plan, is revised to provide that the abbreviated plan must describe how the jurisdiction will affirmatively further fair housing by addressing issues identified in an Equity Plan conducted in accordance with 24 CFR 5.154.

Housing and Homeless Needs Assessment (§ 91.305)

The proposed rule would amend § 91.305, which requires States to provide a concise summary of the estimated housing needs projected for the ensuing 5-year period, would be revised in paragraph (b), which requires a description of the persons affected under the plan, in order to allow States to utilize the analysis contained in the Equity Plan relating to affordable housing opportunities pursuant to §§ 5.152 and 5.154 to satisfy this requirement, to the extent the Equity Plan already contains such information.

Strategic Plan (§ 91.315)

This section of the consolidated plan regulations describes the prescribed content of the State government's strategic plan. The changes made to this section mirror the changes made to § 91.215.

Action Plan (§ 91.320)

This section of the consolidated plan regulations describes the prescribed content of the State government's action plan. The changes made to this section mirror the changes made to § 91.220, but are found in paragraph (j) of § 91.320. In addition, paragraph (k) of this section, which describes the program-specific requirements, would be revised to distinguish any activities or procedures applicable for programmatic requirements from those relating to fair housing and civil rights requirements, including the obligation to affirmatively further fair housing.

Certifications (§ 91.325)

Similar to the amendment to § 91.225, the proposed rule would amend paragraph (a)(1) of § 91.325 to require the State's certification that it will affirmatively further fair housing and that it will take no action that is materially inconsistent with fair housing and civil rights requirements throughout the period for which Federal financial assistance is extended.

Monitoring (§ 91.330)

This section of the consolidated plan regulations describes the State's monitoring of its activities carried out in furtherance of the consolidated plan. The changes made to this section mirror the changes made to § 91.230.

Strategic Plan (§ 91.415)

This section of the consolidated plan regulations describes the prescribed content of a consortium's strategic plan. This section requires a consortium to comply with the provisions of § 91.215, which is proposed to be revised by this rule to incorporate the Equity Plan in the strategic plan. The change that would be made to § 91.415 by this rule is to require the consortium to set forth, in its strategic plan, strategies and actions consistent with the fair housing goals identified in an Equity Plan conducted in accordance with new §§ 5.150 through 5.180.

Action Plan (§ 91.420)

This section of the consolidated plan regulations describes the prescribed content of a consortium's action plan. Paragraph (b) of § 91.420 is revised to provide that the action plan must include actions that the consortium plans to take during the next year that will address fair housing issues identified in the consortium's Equity Plan.

Certifications (§ 91.425)

As with the amendments to §§ 9.225 and 91.325, the proposed rule would amend paragraph (a)(1) of this section to require the consortium's certification that it will affirmatively further fair housing and that it will take no action that is materially inconsistent with fair housing and civil rights requirements throughout the period for which Federal financial assistance is extended.

Monitoring (§ 91.430)

This section of the consolidated plan regulations describes the consortium's monitoring of its activities carried out in furtherance of the consolidated plan. The changes made to this section mirror the changes made to § 91.230.

HUD Approval Action (§ 91.500)

This section of the consolidated plan regulations sets out, among others, the standards by which HUD will review a submitted consolidated plan. Paragraph (b) of this section would be revised to make clear for program participants that the standards set forth in this section are for purposes of the consolidated plan and are distinct from the standards at § 5.162 for purposes of the Equity Plan.

Amendments to the Consolidated Plan (§ 91.505)

This section lists the criteria and procedures by which a jurisdiction must amend its approved consolidated plan. The proposed rule adds a new paragraph (a)(4) to allow amendments to the plan to make necessary changes to account for any revisions to an Equity Plan that is accepted or revised pursuant to § 5.164 after a consolidated plan is in effect.

HOME Investment Partnerships (HOME) Program Regulations (24 CFR Part 92)

Definitions (§ 92.2)

Section 92.2, the definitions section of HUD's HOME regulation, would be revised to reflect that the terms ''affirmatively furthering fair housing'' and ''Equity Plan'' are defined in 24 CFR part 5.

Affirmatively Furthering Fair Housing (§ 92.5)

This section specifics that all participating jurisdictions must comply with the requirements to affirmatively further fair housing.

Program Description (§ 92.61)

This section sets forth how a recipient will structure its use of HOME funds. Paragraph (c)(5) of this section specifies the certifications required for insular areas and would be amended to account for an insular area's obligation to affirmatively further fair housing and conduct its federally funded programs and activities in a manner that is consistent with Federal fair housing and civil rights requirements.

Submission of a Consolidated Plan and Equity Plan (§ 92.104)

This section of the HOME program regulations which addresses the responsibility of a participating jurisdiction to submit its consolidated plan to HUD is revised to provide that the jurisdiction must also submit its Equity Plan to HUD in accordance with the AFFH regulations in 24 CFR part 5, subpart A.

Eligible Administrative and Planning Costs (§ 92.207)

This section sets forth the eligible administrative and planning costs for the HOME program. Paragraph (d) of this section specifically allows for activities relating to fair housing and the obligation to affirmatively further fair housing, and would be amended to cross reference certifications under § 5.166.

Other Federal Requirements and Nondiscrimination (§ 92.350)

This section requires participating jurisdictions to comply with Federal requirements, including nondiscrimination requirements. Paragraph (a) of this section would be amended to include the obligation to affirmatively further fair housing.

Affirmative Marketing; Minority Outreach Program (§ 92.351)

This section requires each participating jurisdiction to adopt and follow affirmative marketing procedures and requirements. Paragraph (a) would be amended for consistency with the obligation to affirmatively further fair housing and to better clarify a recipient's affirmative marketing obligations.

Recordkeeping (§ 92.508)

The proposed rule would amend the recordkeeping requirements of the HOME program to provide in paragraph (a)(7)(i)(B) of this section to require as part of the documentation that the participating jurisdiction has taken actions to affirmatively further fair housing, including documentation relating to the participating jurisdiction's Equity Plan and the requirements at § 5.168, as well as documentation relating to the participating jurisdiction's AFFH certification.

Housing Trust Fund (HTF) Regulations (24 CFR Part 93)

Definitions (§ 93.2)

Section 93.2, the definitions section of HUD's HTF regulation, would be revised to include introductory text to reflect that the terms ''affirmatively furthering fair housing'' and ''Equity Plan'' are defined in 24 CFR part 5.

Affirmatively Furthering Fair Housing (§ 93.4)

This section specifics that all recipients of HTF funds must comply with the requirements to affirmatively further fair housing.

Participation and Submission Requirements (§ 93.100)

Section 93.100 requires a grantee to submit a consolidated plan in order to receive HTF grants. The proposed rule would amend this section, at paragraph (b), to also include the requirement to submit an Equity Plan.

Eligible Activities; General (§ 93.200)

This section of the HTF regulation details the general activities that are eligible to be funded using the HTF grant. Paragraph (a)(1) would be amended by this proposed rule, for consistency with other program regulations for which a consolidated plan is required, to clarify that to the extent the activities in question otherwise are eligible, one potential use of HTF funds may be to implement fair housing goals from an Equity Plan developed pursuant to §§ 5.150 through 5.180.

Eligible Administrative and Planning Costs (§ 93.202)

This section of the HTF regulation describes the eligible administrative and planning costs for administering the HTF program. The changes made to this section mirror the changes made to § 92.207.

Other Federal Requirements and Nondiscrimination; Affirmative Marketing (§ 93.350)

This section sets forth the generally applicable nondiscrimination and affirmative marketing requirements for purposes of the HTF program. The changes made to this section are substantially similar to the changes made to § 92.351.

Recordkeeping (§ 93.407)

This section requires HTF grantees to maintain records relating to the implementation of its HTF program. This proposed rule would add new paragraph (a)(1)(vii), which would require grantees to maintain records documenting the actions the grantee has taken to affirmatively further fair housing, including documentation related to the grantee's Equity Plan described at § 5.168.

Community Development Block Grant (CDBG) Regulations (24 CFR Part 570)

Definitions (§ 570.3)

Section 570.3, the definitions section of HUD's CDBG regulation, would be revised to reflect that the terms ''affirmatively furthering fair housing'' and ''Equity Plan'' are defined in 24 CFR part 5.

Affirmatively Furthering Fair Housing (§ 570.6)

This section specifies that all programs covered by this part must comply with the requirements to affirmatively further fair housing.

Eligible Planning, Urban Environmental Design, and Policy Planning Management—Capacity Building Activities (§ 570.205)

This section which lists policy planning and capacity building activities would add new paragraph

(a)(4)(viii) to reference the Equity Plan. In paragraph (a)(6) of this section, references to the implementation of fair housing goals from the Equity Plan would be added throughout.

Program Administrative Costs (§ 570.206)

This section sets forth the permissible program administrative costs for the CDBG program and paragraph (c) specifically lists fair housing activities as covered by this section. This proposed rule would revise paragraph (c) to update terminology that is outdated.

Citizen Participation—Insular Areas (§ 570.441)

The amendments to this section include inserting references to the Equity Plan.

Other Applicable Laws and Related Program Requirements (§ 570.487)

Paragraph (b) of this section, which addresses the requirement to affirmatively further fair housing, provides that a State is required to certify to HUD's satisfaction that it will affirmatively further fair housing consistent with the requirements of §§ 5.150 through 5.180 and will take no action that is inconsistent with fair housing and civil rights requirements throughout the period for which Federal financial assistance is extended. Similarly, this paragraph would provide that each unit of general local government is also required to make such a certification.

Recordkeeping Requirements (§ 570.490)

This section sets forth that States and local governments that receive CDBG funds must maintain records and have requirements for maintaining records of the administration of CDBG funds. Paragraphs (a) and (b) of this section would be revised to include records relating to the use of CDBG funds for purposes of affirmatively furthering fair housing and the grantee's Equity Plan, in accordance with § 5.168.

Records To Be Maintained (§ 570.506)

Similar to the amendment to § 570.490, the proposed rule would amend this section to provide in paragraph (g)(1) that documentation related to the grantee's Equity Plan is required pursuant to § 5.168.

Public Law 88–352 and Public Law 90–284; Affirmatively Furthering Fair Housing; Equal Opportunity; Executive Order 11063 (§ 570.601)

The heading of this section would be revised to read ''Civil rights; affirmatively furthering fair housing; equal opportunity requirements,'' and paragraph (a)(2) of this section would be amended to provide that the program participant's responsibility to undertake fair housing planning includes taking meaningful actions to further the fair housing goals identified in an Equity Plan that is developed in accordance with the requirements of §§ 5.150 through 5.180 and that it will take no action that is inconsistent with fair housing and civil rights requirements.

Equal Opportunity and Fair Housing Review Criteria (§ 570.904)

Paragraph (c)(2) clarifies that the review undertaken pursuant to this section is distinct from the procedures set forth at 24 CFR part 1, 3, 5, 6, 8, or 146 or 28 CFR part 35 conducted by the Responsible Civil Rights Official, which are reviews for purposes of determining a grantee's compliance with Federal fair housing and civil rights requirements, including the grantee's obligation to affirmatively further fair housing.

Housing Opportunities for Persons With AIDS (HOPWA) Regulations (24 CFR Part 574)

Definitions (§ 574.3)

Section 574.3, the definitions section of HUD's HOWPA regulation, would be revised to reflect that the term ''affirmatively furthering fair housing'' is defined in 24 CFR part 5.

Affirmatively Furthering Fair Housing (§ 574.4)

This section specifies that all grantees must comply with the requirements to affirmatively further fair housing.

Recordkeeping (§ 574.530)

The proposed rule would amend this section of the HOPWA regulations to include documentation of a program participant's Equity Plan, consistent with § 5.168.

Emergency Solutions Grants Program (ESG) Regulations (24 CFR Part 576)

Definitions (§ 576.2)

Section 576.2, the definitions section of HUD's ESG regulation, would be revised to include introductory text to reflect that the term ''affirmatively furthering fair housing'' is defined in 24 CFR part 5.

Affirmatively Furthering Fair Housing (§ 576.4)

This section specifies that all recipients of ESG funds must comply with the requirements to affirmatively further fair housing.

Recordkeeping and Reporting Requirements (§ 576.500)

The proposed rule would amend paragraph (s)(1)(ii) of this section to provide that documentation related to its Equity Plan, consistent with § 5.168, must be maintained.

Public Housing Agency Plans (24 CFR Part 903)

What is the purpose of this subpart? (§ 903.1)

The proposed rule would amend this section to account for the PHA's obligation to affirmatively further fair housing and comply with the requirements set forth at §§ 5.150 through 5.180.

What are the Public Housing Agency plans? (§ 903.4)

The proposed rule would add new paragraph (a)(3) to this section to explain that the plans described in this section also include the incorporation of the fair housing goals established in the PHA's Equity Plan pursuant to § 5.156.

What information must a PHA provide in the 5-year plan (§ 903.6)

The proposed rule would add new paragraph (a)(4) to this section to account for the requirement that the 5-year plan include the PHA's fair housing strategies and meaningful actions it intends to undertake in order to implement the fair housing goals incorporated from the PHA's Equity Plan pursuant to § 5.156.

Paragraph (b)(2), which requires the PHA to account for progress made in meeting the goals and objectives in the PHA's previous 5-year plan, would be revised to permit PHAs to rely on the annual progress evaluations required for the Equity Plan, conducted pursuant to §§ 5.152, 5.154(i) and (j), 5.156(d), and 5.160(f) and (i) for purposes of meeting this requirement as it relates to the PHA's fair housing goals. This means PHAs would not be required to compile new reports on the same information multiple times.

What information must a PHA provide in the annual plan? (§ 903.7)

The proposed rule would revise § 903.7 to account for the requirement to develop an Equity Plan and incorporate the fair housing goals from the Equity Plan into the PHA Plan. Paragraph

(a)(1)(iii) would be revised to permit the PHA, once it has submitted an Equity Plan pursuant to the submission schedule at § 5.160, to rely on its analysis of affordable housing opportunities and the analysis conducted pursuant to § 5.154(e) in connection with its Equity Plan, to the extent applicable, for purposes of the PHA's Annual Plan.

Paragraph (b) of this section would be revised to require that the PHA's deconcentration and other policies that govern eligibility, selection, and admission be consistent with the PHA's obligation to affirmatively further fair housing and the PHA's Equity Plan.

Paragraph (o) of this section would be revised to indicate that each PHA must certify, among other things, that it will affirmatively further fair housing and that it will take no action that is materially inconsistent with fair housing and civil rights requirements throughout the period for which Federal financial assistance is extended pursuant to § 5.166. These revisions relate to the 5-Year Plan and the Annual Plan.

What is a Resident Advisory Board and what is the role in development of the annual plan? (§ 903.13)

This section specifies the requirements for the Resident Advisory Board, and the proposed rule would revise paragraphs (a) and (c) to account for any community engagement activities relating to the Equity Plan pursuant to § 5.158, as well as other consultation requirements relating to the development of the Equity Plan and the incorporation of the fair housing goals from the PHA's Equity Plan into the PHA Plan. The revisions to paragraph (c) also distinguish the different complaint processes as they relate to complaints about the PHA Plan as opposed to complaints relating to the Equity Plan or the PHA's obligation to affirmatively further fair housing.

What is the relationship of PHA Plan to the Consolidated Plan and a PHA's Fair Housing and Civil Rights requirements? (§ 903.15)

The proposed rule would revise the heading of this section to include ''civil rights,'' as PHAs are subject to requirements beyond the Fair Housing Act. The proposed rule would revise § 903.15 in paragraph (a) to indicate that the PHA Plan must be consistent with any applicable Equity Plan incorporated into the applicable consolidated plan pursuant to § 5.156.

Paragraphs (b) and (c) would be revised to reference the Equity Plan. Paragraph (c) would also be revised to reflect the applicable nondiscrimination requirements and the obligation to affirmatively further fair housing. Paragraph (c) is also amended to clarify the certification the PHA must make pursuant to § 903.7(o), and the procedures HUD will follow if HUD challenges the validity of a PHA's certification.

What is the process for obtaining public comment process on PHA Plans? (§ 903.17)

The proposed rule would amend this section to account for the Equity Plan, including the community engagement requirements under § 5.158 and the obligation to incorporate the Equity Plan's fair housing goals into the PHA Plan pursuant to § 5.156.

When is the 5-year plan or annual plan ready for submission to HUD? (§ 903.19)

The proposed rule would add new paragraph (d) to § 903.19 to clarify for PHAs that the plan is not ready for submission to HUD until the PHA has incorporated the fair housing goals from its Equity Plan.

What is the process by which HUD reviews, approves, and disapproves an annual plan? (§ 903.23)

The proposed rule would amend paragraph (f) of § 903.23 to require PHAs to maintain records relating to its Equity Plan, consistent with § 5.168, and records relating to the PHA's AFFH certification.

How does HUD ensure PHA compliance with its PHA Plan? (§ 903.25)

The proposed rule would amend this section to clarify that the procedures HUD will use for the PHA Plan are different from those HUD will use for the Equity Plan, and specifies that the procedures for the Equity Plan are set forth at §§ 5.162, 5.170, 5.172, and 5.174.

Project-Based Voucher (PBV) (24 CFR Part 983)

Site Selection Standards (§ 983.57)

The proposed rule would amend paragraph (b)(1) of § 983.57 to reference the PHA's Equity Plan and to remove paragraph (b)(1)(iii) from this section.

IV. Questions for Comments

HUD welcomes comments on all aspects of the proposal. In addition, HUD specifically requests comments on the following topics:

1. Are there ways in which HUD can further streamline this proposed rule or further reduce burden, while continuing to ensure an appropriate and necessary fair housing analysis that would enable program participants to set meaningful goals that will affirmatively further fair housing?

2. Does HUD's removal of the requirement to identify and prioritize contributing factors still allow for a meaningful analysis that will allow program participants to set goals for overcoming systemic and longstanding inequities in their jurisdictions? If not, how can HUD ensure that such an analysis occurs without imposing undue burden on program participants?

3. HUD intends to continue to provide much of the same data it made available in connection with the implementation of the 2015 AFFH Rule through the AFFH–T, which is available at *https://egis.hud.gov/affht/,* while exploring possible improvements to the existing AFFH–T Data & Mapping Tool. HUD is also exploring other approaches to facilitating program participants' data analysis and making HUD-provided data as useful and easy to understand as possible for program participants and the public. HUD seeks comment on the following related questions:

a. This notice of proposed rulemaking describes potential HUD-provided data, data and mapping tools, guidance, and technical assistance that may highlight some of the key takeaways from the HUD-provided data and help program participants identify likely fair housing issues. Should HUD also provide static data packages that include some of the data included in the AFFH–T and a narrative description of those data? If so, what data would be most helpful to include in these data packages and narrative descriptions? For which program participants would data packages and narrative descriptions be most useful?

b. What additional data and tools could HUD provide to facilitate a regional analysis?

c. What types of data relating to homeownership opportunities should HUD consider providing? In addition to data on homeownership rates, which already are available in the consolidated planning data (CHAS) (which can be accessed at *https://www.huduser.gov/portal/datasets/cp.html*), including by protected class, what other data sources are reflective of disparities in homeownership opportunity?

d. What other data sources should HUD provide for program participants to better identify the various types of inequity experienced by members of protected class groups that are the subject of the proposed rule's required analysis?

e. Are there specific functions that could be included in the AFFH–T to allow the data to be more usable, more

clearly displayed, or otherwise easier to interpret? If so, please provide a description of such functionality.

f. Should HUD consider providing data that are not nationally uniform if they are available for certain program participants even if such data are not available for all program participants? If so, please provide examples of data that would be useful to provide for which there is not nationally uniform data and the reasons why it would be useful for HUD to provide these data.

g. Are there additional data sets HUD could provide or require to be used for purposes of conducting a fair housing analysis that relate to eviction, neighborhood features (access to parks, green space, trees), zoning and land use, and housing-related costs (like transportation)?

4. Are there different or additional regulatory changes HUD could make to the proposed rule that would be more effective in affirmatively furthering fair housing, including ways to improve access to community assets and other housing-related opportunities for members of protected class groups, including historically underserved communities, individuals with disabilities, and other vulnerable populations?

5. In what ways can HUD assist program participants in facilitating the community engagement process so that the Equity Plans program participants develop are comprehensive and account for issues faced by members of protected class groups and underserved communities that program participants may not necessarily be aware of? HUD specifically seeks feedback on the following:

a. Should HUD require that a minimum number of meetings be held at various times of day and various accessible locations to ensure that all members of a community have an opportunity to be heard? Should HUD require that at least one meeting be held virtually?

b. Should HUD provide different requirements for community engagement based on the type of geographic area the program participant serves (*e.g.,* rural, urban, suburban, statewide, etc.) and if so, why should requirements differ based on type of geography?

c. Should HUD require program participants to utilize different technology to conduct outreach and engagement? If so, which technologies have proven to be successful tools for community engagement? Are these technologies usable by individuals with disabilities, including those who utilize assistive technology or require reasonable accommodations such as real-time captioning or sign-language interpreters?

d. Has HUD sufficiently distinguished the differences between community engagement and citizen participation or resident participation such that program participants understand that HUD expects a more robust engagement process for purposes of the development of the Equity Plan than has previously been required for purposes of programmatic planning? How can HUD ensure that these important conversations are fully had within communities while not significantly increasing the burden on program participants and the communities themselves? Are there ways in which HUD can reduce any unnecessary burden resulting from separate requirements to conduct community engagement and citizen participation (for consolidated plan program participants) or resident participation (for PHAs)?

e. Are there specific types of technical assistance that HUD can provide to assist program participants in conducting robust community engagement, including how community engagement can inform goal setting, implementation of goals, and progress evaluations? If so, please specify the types of technical assistance that would be must useful.

f. Should HUD require the community engagement process to afford a minimum amount of time for different types of engagement activities (*e.g.,* public comments on proposed Equity Plans, notice before public meetings)? If so, what should the minimum amount of time be in order to afford members of the community an equal and fair opportunity to participate in the development of the Equity Plan?

6. HUD seeks comments on whether the definition of ''affordable housing opportunities'' is sufficiently clear. HUD also seeks comment on whether the definition should apply to both rental and owner-occupied units. Are there other categories of affordable housing that should be explicitly referenced in this definition?

7. HUD has provided a new definition of ''geographic area of analysis,'' which is intended to provide program participants and the public a clear understanding of the types and levels of analysis that are needed by different types of program participants. Does this definition clearly articulate the geographic areas of analysis for each type of program participant and are the levels of analyses for the types of program participants appropriate to ensure Equity Plans are developed and implemented in a manner that advances equity?

8. HUD requests commenters provide feedback on new § 5.154, which sets out the content of the Equity Plan. HUD specifically requests comment on the following:

a. Are the questions in this proposed rule at § 5.154 effective for purposes of how to assess where equity is lacking and to facilitate the development of meaningful goals that are designed and can be reasonably expected to overcome the effects of past or current policies that have contributed to a systemic lack of equity? Put differently, do the proposed questions clearly elicit from program participants an assessment of the fair housing issues that exist and their causes so that goals can be appropriately tailored to address the identified fair housing issues?

b. Does the analysis in proposed § 5.154 lend itself to identifying fair housing issues for each of the following protected class groups: race, color, national origin, sex, religion, familial status, and disability? If not, how can HUD improve this aspect of the analysis to better serve this purpose? Are there additional data sources that would assist in facilitating this analysis?

c. What additional areas of analysis, if any, should HUD include in § 5.154 that are not currently included in this proposed rule?

d. Should the section on fair housing goals (§ 5.154(g)) be modified, improved, or streamlined so that program participants can set appropriate goals for overcoming systemic issues impacting their communities?

e. This proposed rule does not currently identify which specific maps and tables contained in the HUD-provided data program participants should rely on in answering specific questions provided at § 5.154. Should HUD require the use of specific data sets when responding to these questions in § 5.154, and if so, what benefit would that have? How can HUD ensure that program participants, in using the HUD-provided data, identify the fair housing issues and underlying reasons for what the data show in order to assess where equity is truly lacking in their geographic areas of analysis?

f. What is the proper regional analysis program participants should undertake in order to identify fair housing issues and set meaningful fair housing goals? Should different program participants have different required regional analyses (*e.g.,* States vs. local governments; non-statewide PHAs)?

g. Does HUD need to more specifically explain the required level of geographic analysis, whether in this rule itself or in

sub-regulatory guidance, for purposes of the development of the Equity Plan, including how different levels of geographic analysis would facilitate the setting of fair housing goals that would result in material positive change that advances equity within communities? For example, should HUD require certain types of program participants to conduct an analysis at the following levels of geography for each fair housing issue: Core-Based Statistical Area, Metropolitan Statistical Areas, Block Groups, Census Tracts, and counties?

h. Are there different or additional questions that HUD should pose to rural areas to assist such areas in meeting their obligations to affirmatively further fair housing? If so, how should the analysis for rural areas differ from the required analysis in proposed § 5.154?

i. Has HUD sufficiently explained how to prioritize fair housing issues within fair housing goal categories for purposes of establishing meaningful fair housing goals? What additional clarification is needed, if any?

j. In new § 5.154(e), the required analysis for public housing agencies (PHAs), has HUD sufficiently tailored the analysis required for these entities, in particular for small or rural PHAs, while still ensuring the PHA's Equity Plan is developed and implemented in a manner that advances equity for members of protected class groups, particularly those the PHAs serves or who are eligible to be served by the PHA? How can HUD continue to streamline the required analysis for PHAs while also ensuring an appropriate fair housing analysis is conducted and meaningful fair housing goals are established and implemented?

k. Are there areas of analysis that HUD should include for PHAs that it has not included in this proposed rule that would better assist PHAs in meeting their obligation to affirmatively further fair housing? This may include analysis addressed to PHA-specific programs, such as public housing, vouchers, Moving To Work, or other PHA programs, as well as by type of PHA, such as troubled or qualified PHAs.[28]

l. Are there additional ways HUD could incentivize PHAs to collaborate with consolidated plan program participants in conducting an Equity Plan such that they can pool resources and develop broader solutions to fair housing issues?

m. Since HUD has removed the requirement to identify and prioritize contributing factors, as was required by the Assessment Tool under the 2015 AFFH Rule, do the questions in § 5.154 appropriately solicit responses that would include the underlying causes of the fair housing issues identified?

n. Are there specific questions HUD should ask that it has not proposed in § 5.154 of this proposed rule?

9. In order to reduce burden on program participants, and based on the lessons learned from the implementation of the 2015 AFFH Rule, HUD requests comments on how Equity Plans should be submitted to the Department (*e.g.,* through a secure portal, via email, through a web page that allows uploads, etc.) and whether HUD should mandate the file format the Equity Plan is submitted in (*e.g.,* MS Word, PDF, etc.).

10. HUD has included several new definitions in this proposed rule and requests feedback on whether they should be drafted differently, whether there may be additional definitions that are not included that would be useful, and whether any definitions included in this proposed rule are unnecessary.

11. Has HUD appropriately captured the types of populations—based on the characteristics protected by the Fair Housing Act—that have historically been underserved and continue to be underserved today in communities in the new definition of ''Underserved communities,'' and if not, which additional types of populations or groups should HUD consider adding to this definition?

12. HUD requests feedback on whether including the definition of ''Balanced approach'' is helpful in understanding how to connect funding decisions to advancing equity within communities and how this definition can be modified or improved in order to more clearly make that connection.

13. HUD has changed the way submission deadlines are determined from the way submission deadlines were established under the 2015 AFFH Rule and requests feedback on whether the new submission deadlines provided in § 5.160 are clearer and are the appropriate way to create tiers for the submission by entities of different sizes. HUD welcomes feedback on different cutoffs for this section that are accompanied by explanations of why different cut offs should be used instead of those in this proposed rule. HUD also welcomes comment on whether the timeframes set out in § 5.162 are appropriate and what, if any, obstacles might these new timeframes present with respect to the development of the Equity Plan and compliance with other programmatic requirements?

14. HUD seeks comment on whether it should require new program participants to engage in any specific planning process or other actions to meet their obligation to affirmatively further fair housing prior to the submission of their first Equity Plan.

15. HUD requests specific feedback on new sections §§ 5.170 through 5.174 and whether the compliance procedures and procedures for effecting compliance can be further clarified and improved.

16. This proposed rule provides a stronger link between the regulatory requirements for implementing the AFFH mandate and program participants' subsequent planning processes in order to better ensure that all programs and activities are administered in a manner that affirmatively furthers fair housing, including by taking into account how to allocate funding to effectuate that obligation. HUD requests comments on how HUD can further ensure that program participants are adequately planning to carry out activities necessary to advance equity in their communities. Specifically, are certifications and assurances requirements in this proposed rule, along with the new regulatory provision at § 5.166 sufficient to achieve this objective, and if not, what additional regulatory language can be added that would achieve this objective?

17. Has HUD adequately incorporated the need to assess any lack of homeownership opportunities for protected class groups in this proposed rule? If not, in what ways should access to homeownership be further incorporated? Is there specific data that HUD could provide to further facilitate this analysis?

18. Are there other types of ''community assets,'' that should be included in the new definition and the analysis of disparities in access to opportunity for purposes of the Equity Plan? If so, which assets should be included that are not currently included in this proposed rule?

19. How can HUD best facilitate receiving feedback on Equity Plans submitted for its review from members of the public in order to inform the review process and how should HUD consider such feedback? HUD seeks comment on whether changes to the

[28] Section 2702 of title II of the Housing and Economic Recovery Act (HERA) introduced a definition of ''qualified PHAs'' to exempt such PHAs, that is, PHAs that have a combined total of 550 or fewer public housing units and Section 8 vouchers, are not designated as troubled under section 6(j)(2) of the 1937 Act, and do not have a failing score under the Section Eight Management Assessment Program (SEMAP) during the prior 12 months, from the burden of preparing and submitting an annual PHA Plan. See Public Law 110–289, 122 Stat. 2654, approved July 30, 2008, see 122 Stat. 2863.

regulatory text are necessary, and specifically whether the new definition of ''publication'' at § 5.152 and the provisions in § 5.160 achieve this objective.

20. Are there ways that HUD could better clarify how the fair housing goals from an Equity Plan are incorporated into subsequent planning processes? If so, how can HUD clarify this requirement such that program participants will be able to implement their fair housing goals and achieve positive fair housing outcomes in their communities?

21. What forms of technical assistance could HUD provide that would better position program participants and their communities to develop their Equity Plans and ultimately implement and achieve the fair housing outcomes set therein?

22. HUD specifically solicits comment on the proposal to publish submitted plans that it is reviewing but has not yet accepted or non-accepted. HUD seeks comment on both the benefits of this proposal and concerns with it.

23. HUD specifically asks for input on the following proposals for reducing burden on small program participants:

a. HUD notes that some pieces of the analysis may not always be relevant to some small program participants, depending on the local circumstances. If specific parts of the proposed analysis are not applicable to a small program participant's local circumstances, should HUD permit the program participant to respond to that specific piece of the analysis with ''not applicable''? If so, please identify the specific parts of the analysis that might not always be applicable and the circumstances under which it would not be applicable. If HUD were to permit this, are there procedures it should follow to ensure that program participants still conduct an appropriate fair housing analysis, such as requiring an explanation of why the piece of the analysis is not applicable, with reference to HUD-provided data, local data, and local knowledge, including information gained from community engagement? HUD seeks comment on the extent to which it can achieve significant burden reduction for smaller program participants (and in particular small PHAs) by clarifying expectations in this manner rather than altering the proposed questions. In responding to this request for comment, to the extent a commenter contends that a particular program participant can or cannot reasonably conduct the analysis set forth in the proposed rule, please describe the relevant local circumstances for the program participant, including any demographic patterns, number of units or consolidated plan program allocations, and local infrastructure, as well as the analysis the commenter believes the question is requiring.

b. HUD intends that the burden of analysis for many of the questions in the proposed rule will be lower for smaller program participants that have fewer people, places, and geographic areas to analyze and seeks comment on this topic. Do the questions proposed in § 5.154 appropriately scale with the size and complexity of a program participant, such that it would be easier for smaller program participants to complete the analysis than larger program participants? For example, does the fact that smaller program participants often operate in smaller communities with fewer people, fewer community assets, and less public infrastructure make the analysis easier to complete? If so, how can HUD make explicit that the same question is expected to result in a less burdensome analysis for smaller or less complex program participants? What other mechanisms could be utilized to minimize the burden for all program participants, but particularly smaller program participants, while ensuring an appropriate analysis is conducted to meet the proposed requirements in this rule?

c. Are there other ways in which HUD can alter the required analysis for small program participants that meaningfully reduce burden while ensuring an appropriate AFFH analysis such that these program participants can establish meaningful fair housing goals?

d. To what extent, if any, should small program participants have modified community engagement requirements, such as requiring fewer in-person meetings and allowing different formats for meetings? Are there other ways this proposed rule could modify community engagement requirements to reduce burden on small program participants, while ensuring that underserved communities and groups who have historically not participated in this type of engagement have the opportunity to be part of the process? For purposes of small program participants, are there other ways they may be able to receive equivalent input from the community, aside from those contemplated in the community engagement process set forth in the proposed rule, that would reduce their burden in obtaining local data and local knowledge, while still ensuring they have the necessary information to produce a well-informed and meaningful analysis?

e. Would it be appropriate to modify the goal-setting requirements for smaller PHAs and consolidated plan participants and, if so, what modification would be appropriate? The proposed rule does not specify the number of goals that program participants must set. It does provide that program participants must set goals that collectively address each of the seven fair housing goal categories (which may require fewer than seven goals, since a goal can address more than one category), unless no fair housing issue is identified for any category, in which case no goal is required to address that category. HUD seeks comment on whether any modification of this requirement is appropriate for smaller entities.

24. One way small program participants can reduce the burden of completing the required analysis is to complete joint Equity Plans with other program participants. HUD seeks comment on how it can further encourage small program participants to complete joint Equity Plans.

25. HUD seeks comment on whether it is necessary to establish a definition of ''small PHA'' or ''small consolidated plan participant'' and, if so, how HUD should define these terms.

26. Program participants who collaborate and conduct a joint Equity Plan may benefit from pooling resources to overcome fair housing issues. Are there further incentives HUD should or could offer to program participants that submit joint Equity Plans to HUD?

27. Proposed § 5.164 sets out the minimum criteria for when an Equity Plan must be revised. HUD seeks comment on whether the proposed § 5.164 properly captures the circumstances under which a program participant should revise its Equity Plan, and in particular on the circumstances under which a disaster should or should not trigger the need for such revision.

28. With respect to the proposed AFFH enforcement scheme, proposed § 5.170 would provide that complaints alleging the failure of a program participant to affirmatively further fair housing must be filed with HUD within 365 days of the date of the last incident of the alleged violation, unless the Responsible Civil Rights Official extends the time limit for good cause. While noting that the proposed inclusion of a good cause exception reflects HUD's intent to be consistent with the regulations and practices of Federal agencies with respect to enforcement of various civil rights statutes, HUD specifically seeks comment on the following:

a. Is 365 days an appropriate time limit? Are there specific considerations that argue for a longer or shorter time limit?

b. What specific circumstances might constitute ''good cause,'' under which the Responsible Civil Rights Official might be justified in extending the proposed 365-day deadline (*e.g.,* the conduct constituting the alleged violation was not known or made public within the 365-day period)? Are there specific concerns that mitigate against a good cause exception (*e.g.,* a concern about inconsistent application)?

29. A large amount of Federal funding flows through States to local jurisdictions, and HUD is interested in hearing about how States can utilize those funds to affirmatively further fair housing. HUD recognizes the unique planning responsibilities of States, as well as the wide variation in data, including with respect to the varying sizes and geographies of States (*e.g.,* urban and rural areas). HUD specifically seeks comment on the data needs and tools that may be useful to States in conducting their Equity Plans.

a. How can States encourage broader fair housing strategies at the State level and in localities, and what changes, if any, are needed to the proposed rule that could improve its effectiveness as a tool for States to further fair housing goals?

b. Are there data that HUD could provide to States to assist and facilitate the fair housing analysis required by § 5.154?

c. Is there additional information HUD could provide to States, such as, for example, identifying regional issues where metropolitan areas cross State borders?

d. How can HUD best display or provide data to States given their varied sizes and geographies in order to facilitate the analysis required by § 5.154?

e. Given the unique role that States play, does the analysis and content required in the Equity Plan provide States with sufficient opportunities to coordinate both within the State (*e.g.,* across various departments, offices, or agencies as well as with local jurisdictions) and, as appropriate, with neighboring States?

30. HUD seeks comment on whether the conforming amendments in 24 CFR parts 91, 92, 93, 570, 574, 576, 903, and 983 are adequate to ensure that programmatic requirements are consistent with program participants' implementation of this proposed rule's requirements. Specifically, HUD seeks comment on whether the specific provisions amended are sufficient or whether additional amendments should be made. Are there specific ways in which HUD can further clarify the conforming amendments to assist program participants in understanding and fulfilling their obligations to affirmatively further fair housing?

31. Certain definitions in this proposed rule contain language explaining how the defined term applies to the analysis required by § 5.154 and the type of analysis that HUD expects to be included in an Equity Plan. HUD seeks comment on whether the inclusion of this type of language in the regulations is helpful and provides additional clarity regarding how the defined term should be used for purposes of developing an Equity Plan.

32. As explained in this preamble, the proposed rule would take a different approach than the 2015 AFFH Rule did as it relates to circumstances in which HUD has not accepted a program participant's fair housing plan prior to the date HUD must accept or reject its programmatic plan (*i.e.,* consolidated plan or PHA Plan). Under the 2015 AFFH Rule, HUD was required to disapprove a program participant's programmatic plan under such circumstances, putting the program participant's continued funding at risk. This meant HUD had only two options: (a) accept a fair housing plan despite deficiencies or (b) terminate the program participant's funding. In practice, although HUD rejected some program participants' fair housing plans on initial review and required them to be revised and resubmitted, HUD then accepted every resubmitted plan before the program plan was due, and thus never invoked the only available remedy of rejecting a programmatic plan. In this proposed rule, HUD sets out a more flexible framework that would enable HUD to take additional steps that do not put funding immediately at risk but give a program participant a reasonable opportunity to address deficiencies and submit an acceptable fair housing plan. Under the proposed framework, HUD can reject a program participant's Equity Plan but accept its programmatic plan, allowing funding to continue so long as the program participant signs special assurances prepared by the Responsible Civil Rights Official that require the program participant to submit and obtain HUD acceptance of an Equity Plan by a specific date. The proposed rule provides that the program participant must commit to achieving an Equity Plan that meets regulatory requirements within 180 days of the end of the HUD review period for the programmatic plan and to amend its programmatic plans to reflect the Equity Plan's fair housing goals within 180 days of HUD's acceptance of the Equity Plan in order to continue to receive Federal financial assistance from HUD. A program participant's failure to enter into special assurances will result in disapproval of its funding plan. Those program participants that submit special assurances but do not fulfill them within the timeline provided will face enforcement action that includes the initiation of fund termination and a refusal to grant or to continue to grant Federal financial assistance. Consistent with the increased transparency this proposed rule provides, HUD will publicly post all executed special assurances, and subsequently publicly post Equity Plans submitted pursuant to the special assurances and HUD's decision to accept the plans or not. HUD requests specific feedback on this special assurance framework in general and on revisions that would better effectuate the purposes expressed here and throughout this preamble. In particular, HUD asks:

a. Does the special assurance framework, which would make program participants that enter into special assurances subject to the remedies set out in §§ 5.172 and 5.174, provide sufficient incentive for program participants to develop and submit compliant Equity Plans in a timely manner? Are there changes that can be made to this proposed rule that would further incentivize timely and sufficient submissions?

b. Are the remedies available to HUD under this framework sufficient? Does HUD need to set forth with greater specificity the remedies that a program participant could face for failing to provide an acceptable Equity Plan by the time its programmatic plan must be accepted? In particular, should the final rule specify the circumstances under which a program participant necessarily will lose funding, and if so, what are those circumstances?

V. Findings and Certifications

Regulatory Planning and Review—Executive Orders 12866 and 13563

Under Executive Order 12866,[29] the Office of Management and Budget (OMB) must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB.

[29] *Exec. Order on Regulatory Planning and Review,* E.O. 12866, 58 FR 190 (Oct. 4, 1993), *https://www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf.*

This proposed action is ''significant'' and therefore subject to review by OMB under section 3(f)(4) of Executive Order 12866. The Department has assessed the potential costs and benefits, both quantitative and qualitative, of this proposed regulatory action and has determined that the benefits would justify the costs.

The Department has also reviewed these proposed regulations under Executive Order 13563,[30] which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

The Department is issuing the proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, the Department selected those approaches that maximize net benefits. HUD completed a Regulatory Impact Analysis for this proposal. This section summarizes the findings of that analysis and explains why the Department believes that the proposed regulations are consistent with the principles in Executive Order 13563.

The Department also has determined that this regulatory action would not unduly interfere with State, local, or Tribal governments in the exercise of their governmental functions.

1. Need for Regulatory Action

The segregation and disparities in access to opportunity that prompted the Fair Housing Act's drafters to codify the AFFH obligation persist. This Nation's failure to engage in a concerted and systematic effort to redress its history of housing discrimination has further perpetuated barriers to opportunity, compounding the damage done and heightening the need for regulatory action. This rule operationalizes the statutory obligation to AFFH by creating a streamlined structure for program participants to engage in fair housing planning, in the form of an Equity Plan, calculated to satisfy the AFFH mandate by prompting program participants to take meaningful actions to achieve outcomes that remedy the pervasive segregation and disparities in access to opportunity that the Fair Housing Act was designed to redress.

This rule is necessary to establish an effective approach to implement the AFFH mandate. HUD is currently implementing the obligation to AFFH by requiring that HUD program participants certify that they will affirmatively further fair housing in their programs and activities. The current framework, established by the AFFH IFR, provides program participants with flexibility to choose the method of fair housing planning that they undertake to support their certification. However, the current regulatory regime would benefit from a standardized mechanism to promote compliance with the statutory obligation. This proposed rule restores the planning structure associated with the 2015 AFFH Rule, but with substantial improvements that increase transparency and accountability, while retaining flexibility for program participants to establish fair housing goals based on local circumstances.

This rule creates a guided inquiry to enable program participants to engage in fair housing planning that empowers them to advance equity for members of protected class groups and underserved communities in their jurisdictions and set meaningful goals that effectuate positive fair housing outcomes. In addition, the rule establishes a direct connection between fair housing goals and subsequent planning processes in the consolidated plan, annual action plan, or PHA Plan, thus supporting program participants in embedding equity throughout their decision-making and planning processes as directed by Executive Order 13985.

Without such a guided inquiry, program participants will be greatly hindered in their efforts to redress inequities in their policies, activities, services, and programs that serve as barriers to opportunity and fair housing choice. The rule also provides both HUD and the public with enhanced transparency over, and participation in, a program participant's fair housing planning. This proposed rule would also address HUD's current lack of a mechanism to engage in oversight and enforcement to ensure that program participants comply with their AFFH obligations.

The baseline situation would reflect a similar landscape as HUD's implementation of the AFFH obligation prior to the promulgation of the 2015 AFFH Rule. Prior to that rule, without a formal regulatory planning scheme in place, HUD's implementation of the AFFH obligation was reliant on providing program participants with guidance, mainly in the form of the Fair Housing Planning Guide, to support a broadly permissive approach to fair housing planning which did not require submission of fair housing planning documents to HUD for review. However, as noted by advocates, stakeholders, and community members, and reinforced by the U.S Government Accountability Office in its report, ''HUD Needs to Enhance Its Requirements and Oversight of Jurisdiction's Fair Housing Plans,''[31] such an approach failed to ensure that program participants consistently embedded the required fair housing considerations in their decision-making processes. This approach also prevented HUD from engaging in effective oversight of fair housing planning.

HUD's recently published AFFH IFR was intended to be an interim measure, necessary to expeditiously repeal the PCNC Rule and restore legally supportable definitions and certifications for program participants. This proposed rule would reinstate an effective and meaningful regulatory scheme to implement the AFFH mandate, enhanced by efficiencies derived from lessons learned from the implementation of the 2015 AFFH Rule.

With appropriate planning, guided by the Equity Plan framework laid out in this rule, program participants can be more intentional and strategic in their work to take meaningful actions that overcome patterns of segregation and foster inclusive communities. This proposed rule offers a more streamlined approach to better ensure that tangible fair housing outcomes are achieved. This rule also commits HUD to helping program participants more easily identify where equity in their communities is lacking and how they can advance equity for protected class groups using HUD funds and other investments.

2. Summary Discussion of Costs, Benefits

HUD has analyzed the costs and benefits of complying with this proposed regulation. HUD firmly believes that the benefits of this rule justify the costs of compliance. While program participants will incur costs associated with compliance, including in the development of the Equity Plan, HUD believes such costs are justified by the benefits to society and to individuals of not having to endure the

[30] *Exec. Order on Improving Regulation and Regulatory Review,* E.O. 13563, 76 FR 3821 (Jan. 18, 2011), *https://www.govinfo.gov/content/pkg/FR-2011-01-21/pdf/2011-1385.pdf.*

[31] GAO–10–905, Sept. 14, 2010, *available at https://www.gao.gov/products/gao-10-905.*

costs of racial and other forms of inequity. Additionally, as noted, the approach here reduces prior burdens associated with fair housing planning imposed by the 2015 AFFH Rule, greatly alleviating the compliance costs that were associated with the 2015 AFFH Rule.

3. Benefits of the Proposed Regulations

HUD has analyzed the benefits of complying with the proposed regulations. Executive Order 13985 begins with an acknowledgement that equal opportunity is the bedrock of our democracy. Yet because of our country's legacy of segregation, systemic racism, and other forms of injustice against protected groups, far too many have been denied equal opportunity. This rule directly implements this Executive order's command of affirmatively advancing equity, requiring that program participants, with the support of HUD, identify and address housing-related disparities and other significant disparities in access to opportunity. This rule would specifically provide substantial benefits directly to groups protected by the Act by requiring HUD program participants to expand fair housing choice and improve access to opportunity. By enhancing such opportunity for these groups, implementation of this proposed rule will also promote a more just and equal society.

Current patterns of residential segregation are largely reflective of this Nation's legacy of racially discriminatory housing, ableism, and other policies. As noted earlier in this preamble, these vestiges of discrimination, as well as the corresponding inequitable access to opportunity, persist to this day. This proposed rule requires program participants to redress these injustices. Program participants will be required to promote fair housing choice, enhancing the opportunity for protected groups to live where they choose by addressing the variety of barriers that inhibit such access. For many program participants, expanding access to fair housing choice will necessitate both preserving and expanding accessible and affordable housing opportunities, a critical and urgent need for this country. In particular, this rule requires an analysis of barriers to affordable housing, representing a key opportunity for program participants to identify the policies and practices, such as land use and zoning ordinances, that impede the development and maintenance of affordable housing commensurate with need.

Increasing access to homeownership opportunities based on race can begin to address the racial wealth gap, enabling families of color to accumulate wealth and develop financial security.[32] Individuals with disabilities will also greatly benefit from enhanced access to accessible and affordable housing opportunities, particularly where expanded affordable housing enables individuals with disabilities to access supportive services in a community-based setting.

This rule creates a clearer definition of a balanced approach. A balanced approach entails the balancing of place-based strategies that target investment in areas that have historically been denied critical resources along with strategies designed to combat segregation and promote integration of protected class groups. There is a thorough and growing body of social science research documenting the enhanced quality of life outcomes based on living in well-resourced areas of opportunity.[33] As noted above, growing up in neighborhoods with lower levels of poverty improves children's long-term prospects, through a combination of a variety of factors, including through greater access to quality schools and lower exposure to environmental and other health hazards. This research furnishes strong empirical support for the proposition that where one lives has a profound impact on their trajectory in life. By facilitating moves to areas of opportunity on a substantial scale, as well as place-based transformation of existing areas to areas with opportunity, this rule has the capacity to improve the quality of life of many individuals.[34]

The concept of community assets, embedded as a critical focus in the Equity Plan framework used by the rule, acknowledges that residential segregation did not simply act to produce racially homogenous neighborhoods. Rather, segregation also acted to deprive people of color of access to high-quality features that enhance equality of opportunity and quality of life.[35] Disparities in access to community assets overlap significantly with enduring patterns of residential segregation. By directly requiring that program participants consider community assets in their fair housing planning, this rule will prompt greater access for underserved populations to, among other features, environmentally healthy neighborhoods, grocery stores, employment opportunities that pay a living wage, and reliable transportation services.

For example, the rule critically identifies ''high quality schools'' as an example of a community asset that is not often equitably distributed and available within communities. In 1954, the Supreme Court in *Brown* v. *Board of Education* found that separate educational facilities are inherently unequal.[36] Yet students of color across the Nation are still disproportionately confined to racially and economically segregated, underfunded schools.[37] Disparities in access to equal educational opportunity continue to persist based on protected class group, largely because where a child lives often dictates their ability to attend a high-quality school. Research has shown that most schools' racial composition is relatively similar to that of their surrounding neighborhoods due to existing school boundaries, which has perpetuated school segregation.[38] This rule acknowledges the direct link between housing opportunities and access to equal educational opportunity and prompts program participants to address and eliminate discriminatory housing policies that lead to segregation among schools.[39]

Recent research has identified the extent to which modification of a single school's boundary can upend entrenched patterns of residential and corresponding school segregation.[40] This research highlights the dramatic degree to which school attendance boundaries demarcate racially and ethnically unequal schools, with corresponding data identifying the extent to which these schools are also

[32] *See supra note* 16, McCargo and Choi; note 17, Schuetz.

[33] *See supra* notes 8, 9, 10, 11, 12, 15.

[34] Id.; *see also infra* note 12.

[35] *See, e.g.,* Troustine, *Segregation by Design: Local Politics and Inequality in American Cities,* November 2018.

[36] *Brown* v. *Bd. of Educ. of Topeka* (No. 1.), 347 U.S. 483, 495 (1954).

[37] ''Closing America's Education Funding Gaps,'' The Century Foundation (July 22, 2020), *https://tcf.org/content/report/closing-americas-education-funding/.*

[38] Richard V. Reeves, Nathan Joo, and Grover J. ''Russ'' Whitehurst, ''How school district boundaries can create more segregated schools,'' Brookings (November 20, 2017), *https://www.brookings.edu/blog/social-mobility-memos/2017/11/20/how-school-district-boundaries-can-create-more-segregated-schools/.*

[39] *See also* Executive Order on White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans (October 19, 2021), *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/10/19/executive-order-on-white-house-initiative-on-advancing-educational-equity-excellence-and-economic-opportunity-for-black-americans/.*

[40] Tomas Monarrez & Carina Chien, ''*Dividing Lines: Racially Unequal School Boundaries in US Public School Systems,*'' Urban Institute (September 2021), *https://www.urban.org/research/publication/dividing-lines-racially-unequal-school-boundaries-us-public-school-systems.*

unequal in terms of student achievement, staffing, academic offerings, and discipline rates.[41] In turn, unequal schools further perpetuate both racial and ethnic segregation.[42] This research simultaneously illuminates the depth of this persistent problem while also showcasing the extent to which the housing-school segregation relationship can be disrupted through meaningful yet realistic actions by program participants within their control. In addition to perpetuating the racial achievement gap, such segregation often denies equal educational opportunity to many students with disabilities, who lack access to well-resourced special education programs and related services.

The proposed rule also offers healthcare services as another example of a community asset. Disparities in access to healthcare services, particularly for individuals of color, have been widely documented. The Centers for Disease Control (CDC) has highlighted the extent to which the COVID–19 pandemic has unequally affected many racial and ethnic minority groups, placing them at higher risk of getting sick and dying from COVID–19.[43] The American Medical Association explains that racial and ethnic minorities experience a lower quality of health care, are less likely to receive routine medical care, and face higher rates of morbidity and mortality than nonminorities.[44] By asking program participants to consider inequities in access to healthcare services that are driven by lack of fair housing choice, this proposed rule would seek to expand critical access for racial minorities and other protected class groups to quality healthcare services.

Finally, the proposed rule also implements a more transparent process, allowing the public to have access to all submitted Equity Plans. This will afford the public an opportunity to provide comments to HUD on Equity plan submissions, allowing the public to provide the Department with information relating to a submission that may be useful to HUD in its review of the Equity Plan. The rule also creates a mechanism for HUD to engage in oversight and enforcement of the obligation to affirmatively further fair housing, increasing the likelihood that program participants achieve tangible outcomes that advance equity and increase opportunity for protected groups.

Quantifiable Benefits

There will be substantial benefits associated with the promulgation of this rule. The precise manner in which program participants will comply with this obligation will vary substantially based on the unique local fair housing issues of each program participant. Therefore, it is not possible to quantify many of these benefits with precision. However, once implemented, HUD expects this rule will greatly enhance the welfare of members of protected class groups across a variety of quality-of-life metrics.

Benefits That Cannot Be Quantified

In acknowledging the limitations of assessing proposed regulations exclusively based on those benefits that can be quantified, Executive Order 12866 and Executive Order 13563 require that agencies include qualitative consideration of benefits. This principle, recently affirmed by the White House's Memorandum on Modernizing Regulatory Review, acknowledges that many of the benefits associated with an agency's rulemaking, including equity, justice, and human dignity, are difficult or impossible to quantify.

This rule would promote social welfare, racial justice, human dignity, and equity, essential values not susceptible to quantification. By requiring that program participants effectuate positive fair housing outcomes by reducing longstanding inequities faced by people of color, persons with disabilities, and other protected class groups, this rule would greatly advance racial justice and begin to redress our Nation's history of discriminatory housing policies and practices. It is not enough for governments of all levels to acknowledge the role they played in systematically declining to invest in communities. They must take meaningful actions to overcome the effects of past and current injustices, which HUD is requiring in this rule.

Individuals with disabilities have historically faced discrimination that has limited their opportunity to live independently in community-based settings, resulting in them unnecessarily living in institutions or other segregated settings that limit their autonomy and ability to enjoy the freedom of expression and association that is part of everyday life in the United States. Preventing unnecessary institutionalization and enabling an individual with a disability to live independently and access affordable accessible housing and supportive services in their community is invaluable. Additionally, by improving access to efficient and accessible transportation for this group, individuals with disabilities are more likely to enjoy the independence and dignity associated with employment that pays a living wage.

This rule will also spur program participants to take actions to ensure that other underserved communities have equitable access to affordable housing opportunities, including for LGBTQ+ persons and survivors of domestic violence who face discrimination because of their protected characteristics. Facilitating access to housing can serve as a critical lifeline for these populations that have long been denied equal access in many aspects of American life. While the precise fair housing goals will vary based on the program participant, in the aggregate, these benefits will likely be realized after implementation of this rule. Although the Department cannot, at this time, entirely quantify the economic impacts of the benefits outlined above, the Department believes that they are substantial and outweigh the estimated costs of the proposed regulations.

4. Costs of the Proposed Regulations

HUD does not expect a large change in compliance cost as a result of the rule, as States, local governments, and PHAs are already required to engage in fair housing planning to support their certifications. As discussed more fully in the Regulatory Impact Analysis, HUD estimates a low-end collective compliance cost impact of $21.4 million per 5-year planning cycle for program participants, or about $4.3 million per year. HUD estimates the high-end collective compliance cost to be $135 million per 5-year planning cycle for program participants, or about $27 million per year. The aggregate cost of complying with the planning requirements in this proposed rule is not uniformly distributed among the 5,000 program participants that would bear the costs. Costs would vary among program participants due to several factors.

Given the many uncertainties in the precise cost program participants will incur in complying with the planning processes proposed in this rule, HUD requests public comment on the accuracy of the assumptions contained

[41] *Id.*

[42] *Id.*

[43] CDC, Health Equity Considerations and Racial and Ethnic Minority Groups, *https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html.*

[44] *See* Reducing Disparities in Health Care, American Medical Association, *available at https://www.ama-assn.org/delivering-care/patient-support-advocacy/reducing-disparities-health-care.*

in estimates in the Regulatory Impact Analysis. As explained above, HUD is committed to mitigating compliance costs for these entities by providing technical assistance, including related to the HUD-provided data, particularly so that the required analysis and planning can be completed without the need to hire external consultants and contractors.

HUD also notes that the goal of this rule is to establish a regulatory framework by which program participants may more effectively meet an existing statutory obligation; one that has applied to all recipients of Federal financial assistance for over 50 years. HUD intends for the streamlined analysis proposed in this rule to enhance the efficacy of the fair housing process while lightening the burden faced by program participants in complying with the statutory requirement.

4. A Selected Changes in the Proposed Regulation Not Estimated To Have Costs

HUD does not anticipate that most of the provisions in this proposed rule would generate costs for program participants. Program participants are currently required to certify compliance with a definition of AFFH that is substantially similar to the definition proposed in this rule. Thus, to support this certification, program participants must currently incur some costs to comply. While this rule would reduce some of the currently provided flexibility in fair housing planning, given the streamlined nature of the Equity Plan, HUD anticipates that program participants can accomplish the requirements of this rule by using their existing fair housing planning infrastructure.

As noted earlier in the preamble, this proposed rule refocuses fair housing planning toward the development of meaningful fair housing goals through the Equity Plan framework, which will make the fair housing planning process simpler, while also improving the likelihood of success for program participants. This proposed rule contains substantially fewer questions compared to the requirements of the 2015 AFFH Rule for program participants to answer to determine how best to advance equity for members of protected class groups and underserved communities in their jurisdictions. To the extent program participants were using a process analogous to the 2015 AFFH Rule to support their fair housing planning, this proposed rule would reduce much of that analysis.

HUD has further committed to providing program participants with a data analysis to inform fair housing planning, which, when supplemented with local knowledge, will streamline the identification of fair housing issues. The Department will also provide robust technical assistance and feedback to program participants during the Equity Plan process. Taken together, these process improvements are likely to reduce the compliance costs associated with this rule, let alone impose additional costs over current compliance costs.

Distributional Impacts

As noted, HUD believes that the benefits of this rule will exceed the costs associated with compliance. Even if the aggregate costs associated with compliance with this rule exceeded the net benefits, the rule would still be justified due to its distributional impacts. Under applicable Executive orders governing agency rulemaking, as well as OMB Circular A–4, agencies are required to consider the distributional impacts associated with any rulemaking to ensure that the regulation appropriately benefits, and does not inappropriately burden, disadvantaged, vulnerable, or marginalized communities.

By design and definition, this rule will distribute substantial benefits to groups that lack equitable access to fair housing opportunities, often because they have historically experienced disadvantage. The benefits of this rule will be accrued primarily by protected groups as defined by the Fair Housing Act. These are groups that have been and continue to be denied fair housing choice, isolated in racially or ethnically concentrated areas of poverty or other segregated settings, and subjected to disparities in access to opportunity. HUD also does not believe that this rule places any burden on these groups. In light of the modest anticipated compliance costs associated with the rule, HUD believes that the substantial distributional benefits justify the promulgation of this rule.

5. Regulatory Alternatives Considered

The Department considered the following alternatives to the proposed regulations (1) leaving the current regulations in place without issuing the proposed regulations and (2) repromulgating the 2015 AFFH Rule. The Department rejected alternative (1) for the reasons expressed in the preamble. The current regime, while providing substantial flexibility, lacks a standardized mechanism to promote compliance with the statutory obligation. Under the current framework, HUD also lacks the ability to engage in effective oversight and enforcement of program participants' fair housing planning. Alternative (2) was also rejected for reasons expressed in the preamble. This proposed rule provides a more transparent and streamlined approach than the one HUD implemented in 2015 to help guide communities in taking meaningful actions to achieve tangible fair housing outcomes. After careful consideration of these alternatives, the Department believes that the proposed regulations represent the most effective way to implement the obligation to affirmatively further the purposes and policies of the Fair Housing Act.

Environmental Impact

This proposed rule is a policy document that sets out fair housing and nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(13), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities.

This rule proposes to strengthen the way in which HUD and its program participants meet the requirement under the Fair Housing Act to take affirmative steps to further fair housing. The preamble identifies the statutes, executive orders, and judicial precedent that address this requirement and that place responsibility directly on certain HUD program participants, specifically local governments, States, insular areas, and PHAs, underscoring that the use of Federal funds must promote fair housing choice and open communities. Although local governments, States, insular areas, and PHAs must affirmatively further fair housing independent of any regulatory requirement imposed by HUD, HUD recognizes its responsibility to provide leadership and direction in this area, while preserving local determination of fair housing needs and strategies.

This rule primarily focuses on establishing a regulatory framework by which program participants may more

effectively meet their statutory obligation to affirmatively further fair housing. The statutory obligation to affirmatively further fair housing applies to all program participants, large and small. The statutory obligation requires program participants to develop strategies to affirmatively further fair housing as part of statutorily imposed plans that address the use of HUD funds and that must be submitted to HUD for review and approval. This proposed rule builds on the statutory requirements to affirmatively further fair housing in conjunction with the development of consolidated plans for States, insular areas, and local governments, and PHA Plans for PHAs, and, in doing so, provides for all program participants to comply with their statutory requirements in a cost-efficient, yet meaningful and effective manner.

The current statutory requirement imposed on States, insular areas, local governments, and PHAs requires the program participant to certify that it is affirmatively furthering fair housing. While that certification is a simple and brief document submitted to HUD, it nevertheless represents the attestation of the program participant that it will take meaningful actions to affirmatively further fair housing. While the certification is an important component of a program participant's statutory obligation to affirmatively further fair housing, even more important are the specific actions the program participant takes to affirmatively further fair housing. Because the Fair Housing Act requires that HUD programs and activities be administered in a manner that affirmatively furthers the policies of the Fair Housing Act, it is important for HUD to review the plans that delineate how HUD programs will be implemented so that the Secretary can be assured that HUD program participants are in fact affirmatively furthering fair housing. The proposed rule, therefore, provides for program participants to submit an Equity Plan to HUD.

The rule proposes to reduce administrative burden on program participants in preparing and submitting an Equity Plan to HUD as compared to the prior AI or AFH processes because HUD has proposed to codify, in this proposed rule, the precise and direct questions to which program participants must respond and will assist program participants by providing data, guidance, and technical assistance. HUD will continue to provide local and regional data on access to community assets, such as education, transportation, employment, low-poverty exposure, as well as patterns of integration and segregation, and the demographics of particular types of housing. By responding to the questions in this proposed rule, engaging with their communities, and bringing to bear the knowledge they already have, along with relying on the HUD-provided data, program participants will engage in a more meaningful evaluation of who has access to equity in their communities. This more straightforward and direct analysis will allow program participants to more clearly identify how HUD funds can be used to promote equity, overcome patterns of segregation, and increase access to opportunity and community assets for underserved communities. HUD will also be available to provide technical assistance to program participants in the development of their Equity Plans and implementation of meaningful fair housing strategies and actions. It is HUD's position that this more streamlined approach will reduce burden for program participants, large and small, in meeting their statutory obligation to affirmatively further fair housing, relative to the 2015 AFFH Rule. Nonetheless, HUD is sensitive to the fact that the uniform application of requirements on entities of differing sizes often places a disproportionate burden on small entities. HUD commits to provide guidance to small entities on how the Equity Plan's direct questions may be answered without the need for consultants, contractors, statisticians, or other experts and how they may still establish meaningful and achievable fair housing goals that result in a material positive change.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

The proposed rule will assist program participants of HUD funds to satisfactorily fulfill the statutory obligation to affirmatively further fair housing. As HUD has noted in the preceding section discussing the Regulatory Flexibility Act, and in the Background section of this preamble, the obligation to affirmatively further fair housing is imposed by statute directly on local governments, States, insular areas, and PHAs. As the agency charged with administering the Fair Housing Act, HUD is responsible for overseeing that its programs are administered in a manner that affirmatively furthers the fair housing and civil rights-related purposes and policies of the entities receiving HUD funds and that they fulfill their affirmatively furthering fair housing obligation.

The approach taken by HUD in this proposed rule is to help local governments, States, insular areas, and PHAs meet this obligation in a way that is meaningful, but without undue burden. As noted throughout this preamble, HUD proposes to provide local and regional data on patterns of integration and segregation and access to community assets such as education, transportation, employment, and other important community amenities. This approach, in which HUD offers data, clear standards and required areas of analysis, guidance, and technical assistance, is anticipated to reduce burden and costs that have historically been involved in regulatory schemes governing affirmatively furthering fair housing. Since Federal law requires States, insular areas, local governments, and PHAs to affirmatively further fair housing, there is no preemption, by this rule, of State law.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule will be submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Currently, States, local governments, and PHAs are encouraged to prepare written plans to affirmatively further fair housing, undertake activities to overcome identified barriers to fair housing choice, and maintain records of the activities and their impact consistent with their planning documents and certification. This burden is generally accounted for in the Consolidated Planning and PHA Plan Information Collection Requests (ICRs). OMB Control No. 2506–0117 (Consolidated Plan, Annual Action Plan & Annual Performance Report) estimates 1,234 Localities spend 305 hours

annually on their planning and 50 States spend 741 hours annually on their planning. OMB Control No. 2577–0226 (PHA Plans) estimates that 3,780 PHAs will spend 37.88 hours annually on their planning.

These currently approved collections do not account for the specific burden for the affirmatively furthering fair housing activities addressed in this notice of proposed rulemaking. HUD proposes that the burden of these ICRs would be reduced by accounting for the burden of the affirmatively furthering fair housing planning process provided for in this new ICR. HUD estimates that the burden reduction for the existing collection would be 5%, which HUD would update in future revisions to ICR 2506–0117 and ICR 2577–0226. HUD estimates that the burden hours to develop an Equity Plan will be on a sliding scale from the largest program participants to the smallest considering that the number of factors to consider in an Equity Plan also scales to the size of the program participant. As detailed more fully below, for example, HUD estimates it would take 150 hours for the largest program participants to develop an Equity Plan, *i.e.,* those consolidated planning program participants receiving more than $100 million in annual entitlement allocations and PHAs with 50,000 or more combined public housing and HCV units, as compared to 50 hours for the smallest consolidated planning and PHA program participants, *i.e.,* those consolidated planning program participants receiving less than $1 million in annual entitlement allocations and PHAs with 1,000 or fewer public housing and HCV units.

HUD provides these sliding scale estimates for several reasons. HUD proposes significant changes in this proposed rule from the final 2015 AFFH Rule in order to reduce burden. In particular, HUD is proposing to codify the analysis questions for all program participants rather than having separate assessment tools subject to change through PRA every three years. Because larger program participants tend to operate in larger geographic areas with larger populations, in particular, large metropolitan areas, States, and insular areas, these larger program participants will have more content to analyze. Conversely, smaller program participants tend to operate in less densely populated areas and tend to have fewer community assets. The questions proposed are expected to scale with the size of the jurisdiction of the program participant. In addition, HUD has eliminated various components of the 2015 AFFH Rule's AFH analysis, including, for example, the contributing factors analysis. HUD anticipates that the more streamlined Equity Plan analysis, which will not change every three years pursuant to PRA, will provide a significantly reduced burden. HUD also bases these estimates, including the sliding scale, on the burden hours estimated for AFH preparation during implementation of the 2015 AFFH Rule. Smaller program participants took significantly less time to prepare AFHs than did the larger program participants, and the AFHs were similarly less extensive. These combined factors led to HUD's estimate of 150 hours for the largest program participants, which is 50 hours less than the expected burden for the preparation of all AFHs under the 2015 AFFH Rule.

HUD notes that while these burdens are listed as annual obligations, the majority of any burden will happen for most program participants once every five years. Based on HUD's experience implementing its 2015 AFFH Rule, HUD estimates that 50% of plans will be joint Equity Plans, whereby burden is significantly reduced for program participants. HUD estimates that such joint Equity Plans will, on average, include four joint program participants, and the program participant burden will be reduced to 50 hours per program participant.

In certain circumstances, program participants will be required to revise their Equity Plans. HUD anticipates that 5% of program participants would be required to or voluntarily would revise their Equity Plan, and the revised planning process would take an additional 50 hours per participant. As part of the Equity Plan and revising such plan, program participants will have to complete community engagement activities and maintain records of these activities. HUD estimates that recordkeeping under the proposed rule will be 5 hours per program participant. In support of their progress under the Equity Plan, program participants must complete and provide to HUD annual progress evaluations which are estimated for each program participant to take 10 hours.

As a part of this rulemaking, HUD is providing a process whereby individuals can submit complaints related to the program participant's obligations to affirmatively further fair housing, and HUD anticipates 100 complaints to be received each year, with an estimated total processing burden time of 10 hours for program participants.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Number of responses per party	Estimated average time for requirement (hours)	Total estimated annual burden (hours)
§§ 5.154, 5.168(a)(1) and (3) Equity Plan—Analysis, Fair Housing Goals, Meaningful Actions				
Consolidated Plan Program Participant (States, Insular Areas, Local Governments, and Consortia)	[45] 1,250	1		
$100 Million or More	10	1	150	2,700
$30–99 Million	40	1	125	6,000
$1–29 Million	660	1	100	63,800
Less than $1 Million	540	1	50	24,150
Total Consolidated Plan Program Participant Burden				96,650
All PHAs	[46] 3,835	1		
50,000 or More Public Housing and Voucher Unit PHAs	5	1	150	600
10,000–49,999 Public Housing and Voucher Unit PHAs	50	1	125	6,125
1,000–9,999 Public Housing and Voucher Unit PHAs	610	1	100	61,000
Fewer than 1,000 Public Housing and Voucher Unit PHAs	3,170	1	50	158,600

REPORTING AND RECORDKEEPING BURDEN—Continued

Section reference	Number of parties	Number of responses per party	Estimated average time for requirement (hours)	Total estimated annual burden (hours)
Total PHA Plan Program Participant Burden				226,325
Joint Equity Plans (Total Burden for All Joint Program Participants Combined)	2,511	1	50	125,550
Cumulative Total Burden Hours for Equity Plans and Joint Equity Plans	5,022			*287,038
§§ 5.158, 5.168 Recordkeeping for Community Engagement and Other Activities	5,022	1	5	25,110
§ 5.160(f) Annual progress evaluations	5,022	1	10	50,220
§ 5.170 Complaints	100	1	10	1,000
§§ 5.162(c) and 5.164 Revisions of Equity Plans	251	1	50	12,550
Total Burden				375,918

*(Con Plan + PHA)/2 + Joint Equity Plan.

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate 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) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) 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.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR–5593–P–01) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax: (202) 395–6947

And

Reports Liaison Officer, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 451, 7th Street SW, Washington, DC 20410

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at *https://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *https://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 93

Administrative practice and procedure, Grant programs—housing and community development, Low- and moderate-income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

24 CFR Part 574

Community facilities, Disabled, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, HIV/AIDS, Homeless, Housing, Low and moderate income housing, Non profit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 576

Community facilities, Emergency solutions grants, Grant programs—housing and community development, Grant program—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 903

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

[45] Based on FY2021 data.

[46] Based on FY2022 data.

24 CFR Part 983

Grant programs—housing and community development, Grant programs—Indians, Indians, Public Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR parts 5, 91, 92, 93, 570, 574, 576, 903, and 983 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 29 U.S.C. 794, 42 U.S.C. 1437a, 1437c, 1437c–1(d), 1437d, 1437f, 1437n, 3535(d), and Sec. 327, Pub. L. 109–115, 119 Stat. 2936; 42 U.S.C. 3600–3620; 42 U.S.C. 5304(b); 42 U.S.C. 12101 *et seq.;* 42 U.S.C. 12704–12708; E.O. 11063, 27 FR 11527, 3 CFR, 1958–1963 Comp., p. 652; E.O. 12892, 59 FR 2939, 3 CFR, 1994 Comp., p. 849.

Subpart A—Generally Applicable Definitions and Requirements; Waivers

■ 2. Revise §§ 5.150 through 5.180 under the undesignated center heading ''Affirmatively Furthering Fair Housing'' to read as follows:

Affirmatively Furthering Fair Housing

Sec.
5.150 Affirmatively furthering fair housing: Purpose.
5.151 Affirmatively furthering fair housing: Application.
5.152 Definitions.
5.154 Equity Plan.
5.156 Affirmatively furthering fair housing through Equity Plan incorporation into subsequent planning documents.
5.158 Community engagement.
5.160 Submission requirements.
5.162 Review of Equity Plan.
5.164 Revising an accepted Equity Plan.
5.166 AFFH certifications required for the receipt of Federal financial assistance.
5.168 Recordkeeping.
5.170 Compliance procedures.
5.172 Procedures for effecting compliance.
5.174 Hearings.
5.175–5.180 [Reserved]

Affirmatively Furthering Fair Housing

§ 5.150 Affirmatively furthering fair housing: Purpose.

(a) This section and §§ 5.151 through 5.180 implement the Fair Housing Act's affirmatively furthering fair housing (AFFH) mandate, which requires Federal housing and urban development programs and activities to be administered in a manner that not only avoids and eliminates discrimination, but also remedies the legacy of public and private policies and practices that have created segregated communities and enduring inequities in housing and related opportunities throughout the Nation. This section and §§ 5.151 through 5.180 are intended to ensure that HUD program participants, while making local decisions responsive to local circumstances, commit to and implement concrete actions that will meaningfully remedy persistent segregation, limitations on fair housing choice, and unequal access to community assets and related economic opportunities. This section and §§ 5.151 through 5.180 aim to provide publicly transparent processes, to provide flexibility and avoid unnecessary burden and confusion for program participants, and to create accountability mechanisms that ensure HUD, program participants, and the public at large, all can play a part in meeting the urgent need to ensure that local fair housing issues are fully identified and meaningfully addressed.

(b) To further these aims, this section and §§ 5.151 through 5.180 set out a process under which program participants, after robust engagement with their communities, will conduct a focused analysis of the fair housing issues in their areas, establish fair housing goals to overcome them, and submit their analysis and commitments for HUD review, with the public having an opportunity to submit comments for consideration during HUD's review. Program participants will submit annual progress evaluations, made available to the public, on their accomplishments under each goal they commit to achieve, and will be able to amend or adjust goals that cannot be met or that may require additional time. This section and §§ 5.151 through 5.180 provide procedures for the public to file complaints alleging violations of this section and §§ 5.151 through 5.180 or the duty to affirmatively further fair housing, as well as for HUD to conduct investigations and take any actions necessary to ensure compliance.

(c) Ultimately, this section and §§ 5.151 through 5.180 seek to further implement the AFFH statutory mandate by requiring and assisting HUD program participants to embed fairness and equity in their decision-making processes, particularly with respect to the use of Federal financial assistance and resources, as they recognize and redress inequities in their policies, activities, services, and programs that serve as barriers to equal opportunity in housing. This section and §§ 5.151 through 5.180 seek to expand equitable access to housing and related opportunities across all protected classes, including race, color, national origin, religion, sex (including gender identity, sexual orientation, and nonconformance with gender stereotypes), disability, and familial status.

§ 5.151 Affirmatively furthering fair housing: Application.

All programs and activities relating to housing and urban development must comply with the obligation to affirmatively further fair housing. Sections 5.150 through 5.180 also include specific planning requirements for program participants, as defined in § 5.152.

§ 5.152 Definitions.

For purposes of §§ 5.150 through 5.180, the terms ''consolidated plan,'' ''consortium,'' ''unit of general local government,'' ''jurisdiction,'' and ''State'' are defined in 24 CFR part 91. For public housing agencies (PHAs), ''jurisdiction'' is defined in 24 CFR 982.4. The following additional definitions are provided solely for purposes of §§ 5.150 through 5.180 and related amendments in 24 CFR parts 91, 92, 93, 570, 574, 576, 903, and 983.

Affirmatively furthering fair housing means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation, eliminate inequities in housing and related community assets, and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, reduce or end significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into well-resourced areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws and requirements. The duty to affirmatively further fair housing extends to all of a program participant's activities, services, and programs relating to housing and community development; it extends beyond a program participant's duty to comply with Federal civil rights laws and requires a program participant to take actions, make investments, and achieve outcomes that remedy the segregation, inequities, and discrimination the Fair Housing Act was designed to redress.

Affordable housing opportunities means:

(1) Housing that:

(i) Is affordable to low- and moderate-income households;

(ii) Has a sufficient number of bedrooms to meet the needs of families

of various sizes, particularly large families; and

(iii) Meets basic habitability requirements.

(2) Affordable housing includes publicly supported housing as well as housing that is otherwise affordable to low-income households. For publicly supported housing, such housing must comply with applicable program requirements for affordability and habitability.

(3)(i) The term ''affordable housing opportunities'' includes the location of such housing, including proximity to community assets, locations that promote integration, and locations that provide access to opportunity and well-resourced areas.

(ii) Affordable housing opportunities also includes housing that is accessible to individuals with disabilities, including by providing necessary accessibility features.

(iii) Affordable housing opportunities also includes housing stability for protected class groups, which may be adversely affected by factors such as, but not limited to, rising rents, loss of existing affordable housing, and displacement due to economic pressures, evictions, source of income discrimination, or code enforcement.

Analysis of Impediments to Fair Housing Choice means the analysis described in the Fair Housing Planning Guide (FHPG) originally published by the Department in 1996 or in any subsequent update to the FHPG that HUD may make available.

Balanced approach means and refers to an approach to community planning and investment that balances a variety of actions to eliminate the housing-related disparities that result from segregation, racially or ethnically concentrated areas of poverty (R/ECAPs), the lack of affordable housing in well-resourced areas of opportunity, the lack of investment in community assets in R/ECAPs and other high-poverty areas, and the loss of affordable housing to meet the needs of underserved communities. A balanced approach includes a combination of actions designed to address all these disparities. For example, place-based strategies include actions and investment to substantially improve living conditions and community assets in high-poverty neighborhoods while preserving existing affordable housing stock to meet the needs of underserved communities and address inequitable access to affordable rental and homeownership opportunities. Mobility strategies, on the other hand, focus on the removal of barriers that prevent people from accessing affordable housing, for example in well-resourced areas of opportunity that have historically lacked such housing and effective housing mobility programs and services. To achieve a balanced approach, community planning and investment would need to balance place-based strategies with mobility strategies. Both place-based and mobility strategies that are part of a balanced approach must be designed to achieve positive fair housing outcomes. A program participant that has the ability to create greater fair housing choice outside segregated, low-income areas should not rely on solely place-based strategies consistent with a balanced approach.

Community assets means programs, infrastructure, and facilities that provide opportunity and a desirable environment. Examples of community assets include: high performing schools (as well as quality daycare and childhood educational services), desirable employment opportunities, efficient transportation services, safe and well-maintained parks and recreation facilities, well-resourced libraries and community centers, community-based supportive services for individuals with disabilities, responsive emergency services (including law enforcement), healthcare services, environmentally healthy neighborhoods (including clean air, clean water, access to healthy food), grocery stores, retail establishments, infrastructure and municipal services, banking and financial institutions, and other assets that meet the needs of residents throughout the community.

Community engagement, as required by § 5.158, means a solicitation of views and recommendations from members of the community and other interested parties, consideration of the views and recommendations received, and a process for incorporating such views and recommendations into planning processes, decisions, and outcomes.

Consolidated plan program participant. See definition of ''program participants'' in this section.

Data collectively refers to:

(1) *HUD-provided data.* The term ''HUD-provided data'' refers to metrics, statistics, and other quantified information, including data sets specific to each program participant, provided by HUD, that program participants are required to use in preparing an Equity Plan. HUD-provided data will not only be provided to program participants but will also be posted on HUD's website for public availability; and

(2) *Local data.* The term ''local data'' refers to metrics, statistics, and other quantified information, subject to a determination of reliability or statistical validity by HUD, relevant to the program participant's geographic areas of analysis, that program participants can find through a reasonable amount of search, are readily available at little or no cost, including the location of publicly supported housing, and are necessary for the completion of the Equity Plan.

Days means calendar days.

Disability, as used in this part:

(1) The term ''disability'' means, with respect to an individual:

(i) A physical or mental impairment that substantially limits one or more major life activities of such individual;

(ii) A record of such an impairment; or

(iii) Being regarded as having such an impairment.

(2) The term ''disability'' as used in this part shall be interpreted consistent with the definition of such term under section 504 of the Rehabilitation Act of 1973, as amended by the ADA Amendments Act of 2008. This definition does not change the definition of ''disability'' or ''disabled person'' adopted pursuant to a HUD program statute for purposes of determining an individual's eligibility to participate in a housing program that serves a specified population.

Equity or *equitable* means the consistent and systematic fair, just, and nondiscriminatory treatment of all individuals, regardless of protected characteristic, including concerted actions to overcome past discrimination against underserved communities that have been denied equal opportunity or otherwise adversely affected because of their protected characteristics by public and private policies and practices that have perpetuated inequality, segregation, and poverty.

Equity Plan means:

(1) The plan prepared by program participants, pursuant to § 5.154, to advance local equity in housing, community development programs, and access to well-resourced areas, opportunity, and community assets. The Equity Plan includes two distinct parts:

(i) The analysis of fair housing data and identification of fair housing issues required by the fair housing goal category; and

(ii) The establishment and commitment to undertake fair housing goals, strategies, and meaningful actions for each fair housing goal category, which program participants shall incorporate into subsequent planning documents that identify how the program participant will use funds or take actions to affirmatively further fair housing.

(2) Program participants submit their Equity Plan to HUD for review. The Equity Plan may be conducted and submitted by an individual program participant (individual Equity Plan) or may be a single Equity Plan that is jointly conducted and submitted by two or more program participants (joint Equity Plan). The Equity Plan includes program participants' submission of annual progress evaluations, which will be published on HUD maintained web pages.

Fair housing choice means that individuals and families have the information, opportunity, and options to live where they choose, including in well-resourced areas, without unlawful discrimination and other barriers related to race, color, religion, sex (including sexual orientation gender identity, and nonconformance with gender stereotypes), familial status, national origin, or disability. Fair housing choice encompasses:

(1) Actual choice, which means the existence of realistic housing options (*e.g.,* those that are affordable and attainable), including but not limited to homeownership options;

(2) Protected choice, which means housing that can be accessed without discrimination; and

(3) Enabled choice, which means realistic access to sufficient information, services, and other options regarding both rental housing and homeownership so that any choice is informed. For persons with disabilities, fair housing choice includes a realistic opportunity to obtain and maintain housing with accessibility features meeting the individual's disability-related needs, housing provided in the most integrated setting appropriate to an individual's needs, and housing where community assets are accessible to individuals with disabilities, including voluntary disability-related services that an individual needs to live in such housing.

Fair housing goals means the goals developed by program participants that are based on the analysis conducted in the Equity Plan and are designed and can be reasonably expected to overcome circumstances that cause, increase, contribute to, maintain, or perpetuate fair housing issues in the program participant's geographic areas of analysis. Fair housing goals include a description of progress-oriented, specific measurable steps, including timeframes for achievement, and a description of the amount of and potential sources of funds (if any) needed to implement the goal. Fair housing goals may be short-term, in that they can be achieved relatively quickly, or more ambitious, long-term goals, in that they may take more than a single funding cycle to be fulfilled. Fair housing goals are designed to achieve tangible, positive, and measurable fair housing outcomes for each of the seven fair housing goal categories in the program participant's community. A program participant's fair housing goals must work together to overcome fair housing issues identified in the program participant's Equity Plan. To ensure program participants affirmatively further fair housing, if program participants establish ambitious goals that are contingent upon funding or other actions that are not entirely within their control, program participants also must establish fair housing goals that will achieve positive fair housing outcomes in each goal category without reliance on contingencies that may not be fulfilled. Each fair housing goal includes a description of the key fair housing issue(s) it is designed to remedy or overcome. When achieved, fair housing goals must result in a material positive change toward overcoming fair housing issues.

Fair housing goal categories means the following categories for which program participants must establish fair housing goals to overcome identified fair housing issues:

(1) Integration and segregation;

(2) Racially or ethnically concentrated areas of poverty (R/ECAPs);

(3) Significant disparities in access to opportunity;

(4) Inequitable access to affordable housing and homeownership opportunities;

(5) Laws, ordinances, policies, practices, and procedures that impede the provision of affordable housing in well-resourced areas of opportunity, including housing that is accessible for individuals with disabilities;

(6) Inequitable distribution of local resources, which may include State or municipal services, emergency services, community-based supportive services, and investments in infrastructure; and

(7) Discrimination or violations of civil rights law or regulations related to housing and access to community assets.

Fair housing issue means a condition in a program participant's geographic area of analysis that restricts fair housing choice or access to opportunity and community assets. Examples of such conditions include but are not limited to: ongoing local or regional segregation or lack of integration, racially or ethnically concentrated areas of poverty, significant disparities in access to opportunity, inequitable access to affordable housing opportunities and homeownership opportunities, laws, ordinances, policies, practices, and procedures that impede the provision of affordable housing in well-resourced neighborhoods of opportunity, inequitable distribution of local resources, which may include municipal services, emergency services, community-based supportive services, and investments in infrastructure, and discrimination or violations of civil rights law or regulations related to housing or access to community assets. Participation in ''housing programs serving specified populations,'' as defined in this section, does not present a fair housing issue of segregation, provided that such programs are administered by program participants so that the programs comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d—2000d–4) (Nondiscrimination in Federally Assisted Programs); the Fair Housing Act (42 U.S.C. 3601–19), including the duty to affirmatively further fair housing; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Americans with Disabilities Act (ADA) (42 U.S.C. 12101, *et seq.*); and other Federal civil rights statutes and regulations.

Fair housing strategies and actions means the specific policies and actions intended to implement fair housing goals established in an Equity Plan that are incorporated into the program participant's subsequent planning documents (*e.g.,* consolidated plan, annual action plan, PHA Plan, and other plans relating to education, transportation, infrastructure, and environmental protection, including those required in connection with the receipt of Federal financial assistance from any executive agency or department). Fair housing strategies and actions describe how the funds that are the subject of the particular planning document will be used to affirmatively further fair housing in the program participant's jurisdiction consistent with the Equity Plan.

Funding decisions means decisions made to allocate resources, including Federal financial assistance, State or local funds, bond financing, and the administration, utilization, and allocation of low-income housing tax credits by States, local governments, public housing agencies (as applicable), or other entities.

Geographic area, geographic area of analysis, or area means the areas, including a jurisdiction, region, State, Core-Based Statistical Area (CBSA), or other applicable area (*e.g.,* census tract, neighborhood, ZIP code, block group,

housing development, or portion thereof) relevant to the analysis required by § 5.154. The geographic areas of analysis for the different types of program participants are as follows:

(1) For States or insular areas, the expected geographic area of analysis includes the whole State or insular area pursuant to 24 CFR 91.5, including entitlement and non-entitlement areas, on a county-by-county basis (not neighborhood-by-neighborhood), and, where necessary to identify fair housing issues, lower levels of geography, while also including any analysis of circumstances outside the State that impact fair housing issues within the State;

(2) For local governments, the expected geographic area of analysis includes the whole jurisdiction of the local government pursuant to 24 CFR 91.5, the CBSA, and where necessary to identify fair housing issues, lower levels of geography such as neighborhoods, ZIP codes, census tracts, block groups, housing developments, or portions thereof, while also including any analysis of circumstances outside the jurisdiction that impact fair housing issues within the jurisdiction; and

(3)(i) For PHAs that operate below the State level, the expected geographic area of analysis includes the PHA's whole service area (*e.g.,* the area where a public housing agency is authorized to operate), the CBSA, and where necessary to identify fair housing issues, includes lower levels of geography such as neighborhoods, ZIP codes, census tracts, block groups, housing developments, or portions thereof, along with locations where vouchers administered by the PHA are or could be utilized, while also including any analysis of circumstances outside the service area that impact fair housing issues within the service area.

(ii) For PHAs that operate within an entire State, the PHA's expected geographic area of analysis includes the areas of analysis for States as referenced in paragraph (3)(i) of this definition along with the areas in which the PHA owns, operates, and administers housing programs, and where necessary to identify fair housing issues, includes lower levels of geography.

Homeownership opportunity means that one has the actual choice to own, sell, buy, and finance a home, without discrimination based on a protected characteristic.

Housing programs serving specified populations are HUD and Federal housing programs, including designations in the programs, as applicable, such as HUD's Supportive Housing for the Elderly, Supportive Housing for Persons with Disabilities, homeless assistance programs under the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 *et seq.*), and housing designated under section 7 of the United States Housing Act of 1937 (42 U.S.C. 1437e), that:

(1) Serve specific identified populations; and

(2) Comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d—2000d–4) (Nondiscrimination in Federally Assisted Programs); the Fair Housing Act (42 U.S.C. 3601–19), including the duty to affirmatively further fair housing; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*); and other Federal civil rights statutes and regulations.

Insular area has the same meaning as provided in 24 CFR 570.405.

Integration means a condition, within the program participant's geographic area of analysis, in which there is not a high concentration of persons of a particular race, color, religion, sex, familial status, national origin, or having a disability or a particular type of disability when compared to a broader geographic area. Racial integration means that people of different racial groups generally are not highly concentrated in distinct geographic areas within a community (*e.g.,* census tract or block group). For individuals with disabilities, integration also means that such individuals are able to access housing and services in the most integrated setting appropriate to the individual's needs. The most integrated setting is one that enables individuals with disabilities to interact with persons without disabilities to the fullest extent possible, consistent with the requirements of the Americans with Disabilities Act (42 U.S.C. 12101, et *seq.*) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). See 28 CFR part 35, appendix B (addressing 28 CFR 35.130 and providing guidance on the Americans with Disabilities Act regulation on nondiscrimination on the basis of disability in State and local government services).

Joint program participants means two or more program participants that are jointly conducting and submitting a single Equity Plan (a joint Equity Plan), in accordance with § 5.156 and 24 CFR 903.15(a)(1) and (2), as applicable. Joint program participants pool resources to work together to solve cross-jurisdictional fair housing issues.

Local knowledge means information not provided by HUD that relates to the program participant's geographic areas of analysis, is relevant to the identification of fair housing issues in the program participant's Equity Plan and for setting of fair housing goals to overcome the effects of identified fair housing issues pursuant to § 5.154, is known or becomes known to the program participant, and is necessary for the completion of the Equity Plan. Local knowledge includes, but is not limited to:

(1) Historical information on why current conditions within the geographic areas of analysis exist and persist, which may include State or local laws, ordinances, or policies that cause, perpetuate, increase the severity of, or maintain fair housing issues;

(2) Information provided to the program participant during the community engagement process that draws attention to the existence or cause of one or more fair housing issues; and

(3) Information that assists the program participant in identifying the causes of their local fair housing issues along with appropriate solutions.

Meaningful actions means significant actions that are designed and can be reasonably expected to achieve a material positive change that affirmatively furthers fair housing by, for example, decreasing segregation and increasing integration, increasing fair housing choice, or decreasing disparities in access to opportunity in the program participant's jurisdiction.

Program participants means:

(1) Jurisdictions and insular areas that are required to submit consolidated plans for the following programs:

(i) The Community Development Block Grant (CDBG) program (see 24 CFR part 570, subparts D, F, and I);

(ii) The Emergency Solutions Grants (ESG) program (see 24 CFR part 576);

(iii) The HOME Investment Partnerships (HOME) program (see 24 CFR part 92);

(iv) The Housing Opportunities for Persons With AIDS (HOPWA) program (see 24 CFR part 574); and

(v) The Housing Trust Fund (HTF) program (see 24 CFR part 93).

(2) Public housing agencies (PHAs) receiving assistance under sections 8 or 9 of the United States Housing Act of 1937 (42 U.S.C. 1437f or 1437g).

Protected characteristics are race, color, religion, sex (including sexual orientation, gender identity, and nonconformance with gender stereotypes), familial status, national origin, having a disability, and having a type of disability.

Protected class means a group of persons who have the same protected characteristic; *e.g.,* a group of persons who are of the same race are a protected

class. Similarly, a person who has a mobility disability is a member of the protected class of persons with disabilities and a member of the protected class of persons with mobility disabilities.

Publication means the public online posting of the Equity Plans and annual progress evaluations submitted to HUD for review on HUD-maintained web pages. These web pages will include, among other things, a dashboard to track the status of a program participant's AFFH planning and implementation-related activities and access to Equity Plan submissions, annual progress evaluation reports, and related notifications from the Department.

Publicly supported housing means affordable housing assisted with funding through Federal, State, or local agencies or programs as well as affordable housing financed or administered by or through any such agencies or programs. Examples of publicly supported housing for purposes of the analysis required by § 5.154 include: public housing; Project-Based Section 8; Other HUD Multifamily Housing (*e.g.,* Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons with Disabilities); housing financed with Low-Income Housing Tax Credits (LIHTC); housing financed through loan guarantees (Section 108); and housing subsidized with Housing Choice Vouchers. Other publicly supported housing includes housing funded through the U.S. Department of Agriculture and the U.S. Department of Veterans Affairs, or other HUD-funded housing, such as affordable multifamily housing financed using HOME Investment Partnerships funds, housing financed through the Housing Trust Fund, and housing converted under the Rental Assistance Demonstration.

Racially or ethnically concentrated areas of poverty or *R/ECAPs* means a geographic area with both significant concentrations of poverty and segregation of racial or ethnic populations.

Region means the larger geographic area that a jurisdiction lies within. Regions may vary in size, scope, and relevance based on the nature of the jurisdiction and the fair housing issues present. Regions, which include areas outside the program participant's jurisdiction that are identified in HUD-provided data and supplemented based on local data and local knowledge, and that impact fair housing issues in the jurisdiction. For local government or PHA program participants' jurisdictions that are adjacent to but not located within a Core-Based Statistical Area (CBSA), the region includes the CBSA. For local government or PHA program participants' jurisdictions that are located within CBSAs, the region includes but is not necessarily limited to the other portions of the CBSA.

Responsible Civil Rights Official means the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) or his or her designee.

Reviewing Civil Rights Official means the FHEO official with the designated authority to carry out the actions described in §§ 5.170 and 5.172.

Segregation means a condition within the program participant's geographic areas of analysis in which there is a significant concentration of persons of a particular race, color, religion, sex (including sexual orientation, gender identity, and nonconformance with gender stereotypes), familial status, national origin, or having a disability or a type of disability in a particular geographic area when compared to a different or broader geographic area. Racial segregation includes a concentration of persons of the same race regardless of whether that race is the majority or minority of the population in the geographic area of analysis. For example, in a community where persons of one race (*e.g.,* White) are concentrated in one neighborhood and persons of another race (*e.g.,* African American) are concentrated in a different neighborhood, racial segregation exists in each of the neighborhoods. For persons with disabilities, segregation includes a condition in which available housing or services are not in the most integrated setting appropriate to an individual's needs in accordance with the requirements of the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). See 28 CFR part 35, appendix B (addressing 28 CFR 35.130). Participation in ''housing programs serving specified populations'' as defined in this section does not present a fair housing issue of segregation, provided that such programs are administered to comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d—2000d–4) (Nondiscrimination in Federally Assisted Programs); the Fair Housing Act (42 U.S.C. 3601–19), including the duty to affirmatively further fair housing; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*); and other Federal civil rights statutes and regulations.

Significant disparities in access to opportunity means substantial and measurable differences in access to and quality of housing, education, transportation, economic, and other important opportunities in a community, including community assets, based on protected class and related to where individuals of a particular protected class reside in the program participant's geographic areas of analysis.

Siting decisions means decisions made by State or local entities, including cities, counties, or general units of local government regarding where and where not in a jurisdiction to locate, build, finance, rehabilitate, develop, or permit the development of affordable housing.

Underserved communities means groups or classes of individuals (*i.e.,* underserved populations), that are protected classes or who share a particular characteristic, disproportionately include members of protected class groups, and have not received equitable treatment, as well as geographic communities (*i.e.,* underserved geographic areas) where members of protected class groups do not enjoy equitable access to housing, education, transportation, economic, and other important housing and community-related opportunities, including well-resourced areas and community assets. Examples of underserved communities include: communities of color, individuals experiencing homelessness, Lesbian, Gay, Bisexual, Transgender, Queer, + persons (LGBTQ+), low-income communities or neighborhoods, survivors of domestic violence, persons with criminal records, and rural communities.

Well-resourced areas means areas within the program participant's geographic area of analysis that have high-quality and well-maintained community assets (in view of local economic circumstances), as defined in § 5.152, which afford residents genuine access to opportunity (*e.g.,* transportation, infrastructure, high performing schools, economic opportunity, etc.) as a result of public and private investments.

§ 5.154 Equity Plan.

(a) *General.* (1) Program participants must develop an Equity Plan in accordance with this section. To develop an Equity Plan that is successful in overcoming local fair housing issues, program participants must first conduct an analysis—informed by community engagement, HUD-provided data, and local data and local knowledge—to identify the fair housing issues in their geographic area

of analysis as well as the circumstances and factors that cause, increase, contribute to, maintain, or perpetuate those fair housing issues. Program participants' analysis will focus, at minimum, on seven areas of inquiry specified in this section. These seven areas are the core fair housing goal categories for which program participants must establish fair housing goals for identified fair housing issues.

(2) After engaging with the community in accordance with § 5.158, conducting the analysis, and identifying fair housing issues, circumstances, and factors, program participants must then prioritize the identified fair housing issues in accordance with paragraph (f)(2) of this section for purposes of setting one or more fair housing goal(s) for each fair housing goal category.

(3) After prioritizing fair housing issues, program participants must then establish one or more fair housing goal(s) to overcome the prioritized fair housing issues for each fair housing goal category. A well-designed fair housing goal may be effective in overcoming more than one fair housing issue, including fair housing issues in more than one fair housing goal category.

(4) After the program participant has established fair housing goals, the program participant must submit the Equity Plan to HUD for review in accordance with § 5.160.

(5) Once a program participant's Equity Plan has been reviewed and accepted by HUD in accordance with § 5.162, the program participant must incorporate the fair housing goals from its Equity Plan, along with the fair housing strategies and actions that are necessary to implement the goals, into its planning documents that are required by Federal statutes or regulations as described in § 5.156.

(6) On an annual basis following the acceptance of a program participant's Equity Plan, the program participant must prepare and submit to HUD for review an annual progress evaluation that describes the program participant's progress toward achieving each fair housing goal in the Equity Plan, any changed circumstances that are likely to affect the program participant's ability to achieve any of its established fair housing goals, and any proposed adjustments to the program participant's fair housing goals that are necessary to ensure that the program participant will be able to achieve the fair housing goals in its Equity Plan and comply with the requirements of this subpart.

(7) Following the submission of a program participant's annual progress evaluation, HUD will accept the proposed adjustment to any fair housing goal(s) or provide feedback to the program participant describing how the fair housing goals may be adjusted so HUD can accept them. The fair housing goals of an Equity Plan that has been accepted by HUD will remain in effect unless a program participant's adjusted goal has been accepted by HUD.

(b) *Development of the Equity Plan.* Aided by training, technical assistance, and HUD-provided data as well as local knowledge, local data, and information from engaging with their communities and other agencies or government entities in their geographic area of analysis, program participants will develop the Equity Plan and submit to HUD for review. Certain portions of the analysis required for the development of an Equity Plan may rely on local data, local knowledge, or information obtained through community engagement to supplement HUD-provided data or in lieu of HUD-provided data if HUD is unable to provide data.

(c) *Content of Equity Plan*—(1) *General.* Each program participant shall prepare an Equity Plan for the purpose of developing fair housing goals, strategies, and meaningful actions that are designed and can be reasonably expected to overcome identified fair housing issues in each fair housing goal category and advance equity based on protected characteristics in its geographic area of analysis with respect to its programs, services, and activities, including funding and siting decisions.

(2) *Fair housing goals.* Fair housing goals established by the program participant in the Equity Plan shall include strategies and meaningful actions. The fair housing goals, strategies, and meaningful actions shall be incorporated, pursuant to § 5.156, into the program participant's consolidated plans, annual action plans, PHA Plans, and any other plan incorporated therein, and community plans including, but not limited to, education, transportation, or environment and climate related plans, including those required in connection with the receipt of Federal financial assistance from any Federal executive agency or department.

(3) *Scope of analysis.* The Equity Plan's analysis, identification of fair housing issues, and establishment of goals must address, at minimum, the following fair housing goal categories:

(i) Segregation and integration;

(ii) Racially or ethnically concentrated areas of poverty (R/ECAPs);

(iii) Disparities in access to opportunity;

(iv) Inequitable access to affordable housing opportunities and homeownership opportunities;

(v) Laws, ordinances, policies, practices, and procedures that impede the provision of affordable housing in well-resourced areas of opportunity, including housing that is accessible for individuals with disabilities;

(vi) Inequitable distribution of local resources, which may include municipal services, emergency services, community-based supportive services and investments in infrastructure; and

(vii) Discrimination or violations of civil rights law or regulations related to housing or access to community assets based on race, color, national origin, religion, sex, familial status, and disability.

(4) *Conducting the analysis.* In conducting the Equity Plan's analysis, the program participant must evaluate the jurisdiction's local policies and practices impacting fair housing to determine whether changes are necessary in order to affirmatively further fair housing. The analysis required will depend on whether the program participant is a local government, State, insular area, or a PHA.

(d) *Content: Analysis—local governments, States, and insular areas.* At minimum, using HUD-provided data, local data, and local knowledge, including information obtained through community engagement required by § 5.158, the Equity Plan shall respond to the following questions with respect to the program participant's jurisdiction and region:

(1) *Demographics.* (i) What are the current demographics of the geographic area of analysis by protected class group (race, color, national origin, religion, sex, familial status, and disability) and how have demographics changed over time (*e.g.,* since 1990 or the three last decennial censuses, whichever is shorter)?

(ii) What are the current demographics of residents of different categories of publicly supported housing in the jurisdiction and how have those demographics changed over time?

(2) *Segregation and integration.* (i)(A) Which areas within the geographic area of analysis have significant concentrations of particular protected class groups, including racial/color/ethnic groups, national origin groups, particular limited English proficient (LEP) groups, individuals with disabilities, and other protected class groups?

(B) Which, if any, of these geographic areas extend beyond the boundaries of

the jurisdiction? Please note that depending on the geographic areas used in this analysis, the jurisdiction's analysis may need to include areas that go beyond the jurisdiction's specific boundaries.

(ii) How have patterns of segregation and integration in particular geographic areas, as defined in § 5.152, changed over time in the jurisdiction and region?

(iii)(A) Compare the locations of publicly supported housing with the areas of concentration (identified in paragraph (d)(2)(i) of this section).

(B) How do the demographics of publicly supported housing compare to the demographics of areas where the housing is located (identified in paragraph (d)(2)(i) of this section)?

(C) How have siting decisions of private or publicly supported housing or the location of residents using Housing Choice Vouchers impacted the overall patterns of concentration (identified in paragraph (d)(2)(i) of this section)?

(iv) What public or private policies or practices, demographic shifts, economic trends, or other factors may have caused or contributed to the patterns described in paragraphs (d)(2)(i) through (iii) of this section?

(3) *R/ECAPs.* (i)(A) Identify and describe R/ECAPs, including their location.

(B) What are the demographic groups living in R/ECAPs by protected class?

(C) Which protected class groups predominantly reside in R/ECAPS? To the extent that data is available, what percentage of each protected class group in the jurisdiction or region resides in R/ECAPs?

(ii) How have the demographics and location of R/ECAPs changed over time? For example, has there been an expansion or decrease in the number of R/ECAPs in the geographic area of analysis? Has concentration of protected class groups within each R/ECAP increased or decreased?

(iii)(A) How do R/ECAPs in the geographic area of analysis align with the location of publicly supported housing?

(B) What are the demographics of residents of publicly supported housing residing in R/ECAPs, including by program category, in comparison to the demographics of R/ECAPs?

(iv) What public or private policies or practices, demographic shifts, economic trends, or other factors may have caused or contributed to the patterns described in the responses to paragraphs (d)(3)(i) through (iii) of this section?

(4) *Access to community assets.* (i) Describe which protected class groups experience significant disparities in access to the following community assets:

(A) Education;

(B) Employment;

(C) Transportation;

(D) Low-poverty neighborhoods;

(E) Environmentally healthy neighborhoods; and

(F) Other community assets as defined in § 5.152?

(ii)(A) Are there locations in the geographic areas of analysis in which protected class groups experience significant disparities in access to community assets listed in paragraph (d)(4)(i) of this section?

(B) If so, which protected class groups experience lack of access and where?

(C) Describe whether there is a difference in whether residents of segregated areas and R/ECAPs, identified in paragraphs (d)(2) and (3) of this section, have access to each of the community assets listed in paragraph (d)(4)(i) of this section compared to the jurisdiction as a whole?

(iii) Describe the barriers that deny individuals with disabilities access to opportunity and community assets in your geographic area of analysis with regard to the following:

(A) Accessible and affordable housing;

(B) Accessible government facilities and websites;

(C) Accessible public infrastructure (sidewalks, pedestrian crossings, parks and recreation, libraries);

(D) Reliable and accessible transportation;

(E) Accessible schools and educational programs, and, in particular, high-performing schools and educational programs;

(F) Employment; and

(G) Community-based supportive services.

(iv)(A) In what ways do residents of publicly supported housing, by protected class group, experience disparities in access to opportunity and community assets described in paragraphs (d)(4)(i) through (iii) of this section?

(B) In what ways do underserved communities experience such disparities?

(v) Is there a disproportionate need in underserved communities for place-based community or economic development, such as assistance for small businesses and microenterprises, infrastructure, commercial redevelopment, job creation or retention and job training? If so, note the type of issues identified by program participants or residents.

(vi) What public or private policies or practices, demographic shifts, economic trends, or other factors may have caused or contributed to the patterns described in the responses to paragraphs (d)(4)(i) through (iv) of this section?

(5) *Access to affordable housing opportunities.* (i) Describe the availability of affordable housing opportunities that are affordable to families, by protected class group, at various income levels and where such housing is located in the geographic area of analysis, including whether such housing affords access to community assets and well-resourced areas. This assessment includes an evaluation of whether different protected class groups at various income levels have fair housing choice in their ability to access affordable housing in particular areas in the jurisdiction.

(ii) Describe the housing cost burden (*e.g.,* more than 30 percent of monthly income) and severe housing cost burden (*e.g.,* more than 50 percent of monthly income) and overcrowding (particularly for large families) experienced by protected class groups and indicate whether such burden aligns with previously identified segregated or integrated areas, or R/ECAP or non-R/ECAP areas.

(iii) Describe disparities in housing quality (*i.e.,* substandard housing conditions) by protected class group and indicate whether such disparities align with previously identified segregated or integrated areas, or R/ECAP or non-R/ECAP areas.

(iv) Which protected class groups, in the geographic area of analysis, disproportionately face housing instability due to rising rents, loss of existing affordable housing, and displacement due to economic pressures, eviction, source of income discrimination, or code enforcement?

(v) Describe how access to affordable housing opportunities has changed in the geographic area of analysis over time. Describe how this change has affected patterns of segregation and integration or the expansion or contraction of R/ECAP and non-R/ECAP areas in the geographic area of analysis.

(vi) What public or private policies or practices, demographic shifts, economic trends, or other factors may have caused or contributed to the patterns described in responses to paragraphs (d)(5)(i) through (v) of this section?

(6) *Access to homeownership and economic opportunity.* (i)(A) Which protected class groups experience significant disparities in access to homeownership opportunities?

(B) What are the homeownership rates by protected class?

(ii) Are there protected class groups that experience significant disparities in

access to other economic opportunities, which may include but are not limited to:

(A) Access to livable-wage jobs;

(B) Access to services of reputable mortgage lenders and other financial institutions;

(C) Access to fair and affordable credit;

(D) Access to reputable financial counseling services; and

(E) Fair residential real estate appraisals and valuations? If so, which protected class groups experience lack of access?

(iii) What public or private policies or practices, demographic shifts, economic trends, or other factors may have caused or contributed to the patterns described in responses to paragraphs (d)(6)(i) and (ii) of this section?

(7) *Local and State policies and practices impacting fair housing.* (i) How do local laws, policies, ordinances, and other practices impede or promote the siting or location of affordable housing in well-resourced neighborhoods? What is the relationship between those laws, policies, ordinances, and other practices and the segregated or integrated areas and R/ECAP or non-R/ECAP areas identified in paragraphs (d)(2) and (3) of this section?

(ii) How do local laws, policies, ordinances, and other practices impede or promote equitable access to homeownership and other asset building and economic opportunities by protected class group?

(iii) How have existing zoning and land use policies or ordinances, the presence or lack of source of income anti-discrimination laws, eviction policies and practices, and other State and local policies or practices contributed to the patterns of segregation, integration, and R/ECAPs identified in paragraphs (d)(2) and (3) of this section, as well as access to affordable housing opportunities in well-resourced areas throughout the geographic area of analysis for protected class groups?

(iv) Describe the efforts and activities undertaken by the program participant to work, collaborate, or partner with other offices, departments, agencies, or entities within the program participant's jurisdiction that aim to advance equity.

(v) What is the status of any unresolved findings, lawsuits, enforcement actions, settlements, or judgments in which the program participant has been a party related to fair housing or other civil rights laws in the jurisdiction?

(vi) What efforts does the program participant take to increase fair housing compliance and enforcement capacity, and to ensure compliance with existing fair housing and civil rights laws and regulations, in its geographic area?

(e) *Content: Analysis—public housing agencies.* PHAs must include in their Equity Plan an analysis of the area in which the PHA operates, whether the PHA operates in all parts of its authorized service area, and the PHA's programs. PHAs may rely on relevant aspects of the analysis contained in an accepted Equity Plan of the jurisdiction within which it operates to ensure consistency with the jurisdiction's consolidated plan, to the extent the accepted Equity Plan covers the PHA's service area or region. PHAs may rely on the jurisdiction's analysis with respect to general demographics, areas of segregation and integration, the location of R/ECAPs, and where certain opportunities exist or do not exist, but must perform its own analysis of how those background circumstances affect equity in its own programs, activities, and services. Similarly, PHAs that conduct a joint Equity Plan with a local government, State, or insular area may rely on the analysis provided by the other joint program participants with respect to certain aspects of the analysis (so long as the analysis is sufficient for the PHA to meet its own obligations with respect to this section), such as general demographics, areas of segregation and integration, the location of R/ECAPs, and where certain opportunities exist or do not exist within the PHA's service area and region. Using HUD-provided data, local data, and local knowledge, including information obtained through community engagement required by § 5.158, the Equity Plan shall respond to the following questions with respect to the PHA's service area and region:

(1) *Demographics.* (i) What are the current demographics of the geographic area of analysis by protected class group (race, color, national origin, religion, sex, familial status, and disability) and how have those demographics changed over time (*e.g.,* since 1990 or the three last decennial censuses, whichever is shorter)?

(ii)(A) What are the current demographics of the different categories of PHA owned or administered housing, and how have those demographics changed over time?

(B) What are the current demographics of the different categories of other publicly supported housing in the PHA's geographic area of analysis, and how have those demographics changed over time?

(2) *Segregation and integration.* (i) Which areas within the geographic area of analysis have significant concentrations of particular protected class groups, including racial/color/ethnic groups, national origin groups, particular limited English proficient (LEP) groups, individuals with disabilities, and other protected class groups? Which, if any, of these areas extend beyond the boundaries of the service area?

(ii) How have patterns of segregation and integration in particular geographic areas changed over time?

(iii)(A) How do patterns of segregation and integration in the geographic area of analysis align with the demographics and location of publicly supported housing developments?

(B) Since 1990 or the three last decennial censuses, whichever is shorter, how have publicly supported housing siting decisions resulted in an increase or decrease of patterns of segregation or integration in the area, or have no such changes related to publicly supported housing siting decisions been experienced?

(iv) What public or private policies or practices, demographic shifts, economic trends, or other factors may have caused or contributed to the patterns described in responses to paragraphs (e)(2)(i) through (iii) of this section?

(3) *R/ECAPs.* (i)(A) Identify and describe R/ECAPs, including their location.

(B) What are the demographic groups (by protected class) living in R/ECAPs?

(C) What percentage of each protected class group in the jurisdiction or region resides in R/ECAPs?

(ii)(A) How have the demographics and location of R/ECAPs changed over time? For example, has there been an expansion or decrease in the number of R/ECAPs in the geographic area of analysis? Has concentration of protected class groups within each R/ECAP increased or decreased?

(B) Describe the conditions in R/ECAPs that limit access to opportunity for the residents who live there, including housing costs and cost burden, housing quality, housing instability, displacement, source of income discrimination, and eviction risk. How have these conditions changed over time?

(iii)(A) How many of the PHAs' public housing developments are located in R/ECAPs?

(B) Compare the demographics and location of the residents of public housing with the demographics and location of the R/ECAP.

(iv)(A) What proportion of the PHA's vouchers are inside R/ECAPs compared to those outside R/ECAPs?

(B) What are the demographics (by protected class) of the PHA's Housing

Choice Voucher assisted households residing inside R/ECAPs compared to those outside R/ECAPs?

(C) Compare the locations of the Housing Choice Vouchers in the service area (including other PHAs' Housing Choice Vouchers) to the location of R/ECAPs described in paragraph (e)(3)(i) of this section.

(v) What public or private policies or practices, demographic shifts, economic trends, or other factors may have caused or contributed to the patterns described in paragraph (e)(3)(i) through (iv) of this section?

(4) *Access to community assets and affordable housing opportunities.* (i)(A) Describe which protected class groups have a disproportionately greater need for affordable housing opportunities. How do these groups compare to the PHA's current assisted resident demographics?

(B) Are there other underserved communities or groups (*e.g.,* persons experiencing homelessness) that also have a disproportionately greater need for affordable housing opportunities?

(ii)(A) Of PHA participants, describe which protected class groups experience significant disparities in access to the following community assets:

(1) Education;

(2) Employment;

(3) Transportation;

(4) Low-poverty neighborhoods;

(5) Environmentally healthy neighborhoods;

(6) Affordable housing opportunities and homeownership opportunities; and

(7) Other community assets as defined in § 5.152.

(B) Which protected class groups on the PHA's waiting list or who want to be on the PHA's waiting list experience significant disparities in access to the community assets identified in paragraph (e)(4)(ii)(A) of this section based on available local data and local knowledge?

(iii)(A) Compare locations of the PHA's public housing and Housing Choice Vouchers and the demographics of voucher assisted households with areas that have greater access or that lack access to these community assets identified in paragraph (e)(4)(i)(A) of this section.

(B) Using this comparison, together with the analysis on segregation (paragraph (e)(2)(i) of this section) and R/ECAPs (paragraph (e)(3)(i) of this section), is there a lack of affordable rental opportunities in more well-resourced areas, including units affordable for housing choice vouchers and for improved voucher mobility outcomes?

(C) How has access to community assets changed for the PHA's residents based on the PHA's funding and sitting decisions?

(iv) Are there developments in the PHA's stock or residents of the PHA's publicly supported housing in particular neighborhoods in the PHA's service area that do not have the same access to the community assets compared to other residents located in the PHA's service area? Assets in this question refer to those described in paragraph (e)(4)(i) of this section as well as other infrastructure and municipal services (*e.g.,* potable drinking water, sewer and drainage systems, trash collection, snow removal, sidewalks, etc.).

(v) Describe any differences, based on local data and local knowledge, in the quality of the PHA's housing for residents residing in:

(A) R/ECAPs compared to the housing the PHA offers residents residing in other parts of the PHA's service area; and

(B) Elderly-designated housing or housing disproportionately serving older adults (whether or not specifically authorized to do so) compared to housing serving families.

(vi) Describe whether individuals with disabilities who participate in or who are eligible to participate in the PHA's programs, services, and activities experience barriers that deny individuals with disabilities access to opportunity and community assets in the geographic areas of analysis with regard to the following:

(A) Accessible and affordable housing;

(B) Accessible government facilities and websites;

(C) Accessible public infrastructure;

(D) Reliable and accessible transportation;

(E) Accessible schools and educational programs, and in particular, high-performing schools and educational programs;

(F) Employment; and

(G) Community-based supportive services.

(vii) What public or private policies or practices, demographic shifts, economic trends, or other factors may have caused or contributed to the patterns described in the responses to paragraphs (e)(4)(i) through (vi) of this section?

(5) *Local policies and practices impacting fair housing.* (i) How do local laws, policies, ordinances, and other practices impede or promote the siting of affordable housing and use of Housing Choice Vouchers in well-resourced areas of opportunity? This analysis shall include both policies of the kind that are under the PHA's direct control (for example, preferences, types of housing designations, creation and retention of units for large families) and municipal or State policies, such as zoning and land use policies, ordinances, or regulations, eviction policies and procedures, or the lack of laws banning source of income discrimination, that are known to the PHA that impact the siting of affordable housing and voucher mobility.

(A) Describe the boundaries of the PHA's service area.

(B) Describe the PHA's mobility and portability policies and activities; is there a need for additional mobility services, landlord incentives, policies related to portability policies or to payment standards and fair market rents, or other policies that might improve housing choice voucher mobility outcomes?

(C) Is there a need for services, improved access to economic opportunity, or place-based investments to assist the PHA's assisted residents or the neighborhoods where its housing developments or Housing Choice Vouchers are located? Examples could include a need for services for residents, job training and placement, service coordinators, health access, after-school programs or tutors, broadband access, access to reputable and affordable financial services?

(ii) Describe the efforts and activities undertaken by the PHA to work, collaborate, or partner with other offices, departments, agencies, or entities within the program participant's jurisdiction that aim to advance equity.

(iii) What is the status of any unresolved findings, lawsuits, enforcement actions, settlements, or judgments involving the PHA related to fair housing or other civil rights laws?

(iv) What specific steps does the PHA take to ensure compliance with existing fair housing and civil rights laws and regulations, including the implementation of discretionary policies and practices (*e.g.,* policies related to preferences, portability, reasonable accommodations, unit tenanting, including designated accessible units, evictions)?

(f) *Content: Description and prioritization of fair housing issues.* (1) For each program participant, the Equity Plans shall include a description of the fair housing issues identified during the analysis conducted for each fair housing goal category. The description of a fair housing issue shall include the specific conditions that constitute the fair housing issue and the protected class groups that are adversely affected by the issue. Program participants are expected to identify all fair housing issues. They must also identify those that present the

greatest barriers to fair housing choice and deny equitable access to community assets for protected class groups.

(2) For purposes of establishing the Equity Plan's fair housing goals, program participants must prioritize the identified fair housing issues in each fair housing goal category. When prioritizing fair housing issues, program participants must give consideration to fair housing issues faced by underserved communities that have historically been denied fair housing choice, isolated in racially or ethnically concentrated areas of poverty or other segregated settings, and subjected to disparities in access to opportunity, including the opportunity to live in well-resourced areas, the opportunity to enjoy equal access to community assets, and access to homeownership opportunities. In determining how to prioritize fair housing issues within each fair housing goal category, program participants shall give highest priority to fair housing issues that will result in the most effective fair housing goals for achieving material positive change for underserved communities, taking into account that different protected class groups may be impacted by different fair housing issues.

(g) *Content: Fair housing goals.* (1) For each program participant, the Equity Plan shall include the establishment of fair housing goals that are designed and can be reasonably expected to overcome the fair housing issues identified through the analysis conducted pursuant to paragraphs (d) and (e) of this section. Program participants are not required to set fair housing goals for fair housing goal categories that do not have identified fair housing issues. While HUD expects to see progress toward the achievement of each goal by the time of the program participant's next Equity Plan, HUD recognizes that all goals may not be fully achieved during a single five-year cycle.

(2) Fair housing goals, when taken together, must be designed to overcome prioritized fair housing issues in each fair housing goal category and must be designed and reasonably expected to result in material positive change and consistent with a balanced approach.

(3) A program participant's goals may consist of short-term goals such that material positive change is readily achieved, as well as long-term goals such that material positive change occurs within the jurisdiction over a prolonged but reasonable period of time. When establishing fair housing goals, program participants may adopt a small number of goals if such goals could ultimately result in outcomes that have a significant impact toward advancing equity for protected class groups by reducing the adverse effects of fair housing issues. Program participants' consideration of the reach and breadth of their own authority and spheres of influence must be taken into account when determining which goals to set. A program participant may prioritize implementation of particular goals over others but must ensure that any prioritization will result in meaningful actions that affirmatively further fair housing. So long as a program participant meets these requirements, the program participant has discretion to set goals that can reasonably be expected to address local fair housing issues and to specify actions necessary to implement those goals. The following are examples of some goals that may be appropriate depending on the circumstances facing the jurisdiction; these examples are not the only types of goals program participants may set nor are program participants required to set these specific goals if they would not address the fair housing issues in their communities.

(i) A fair housing goal to overcome segregation in specific neighborhoods in the jurisdiction could consist of:

(A) Siting development of future affordable housing outside of segregated areas; and

(B) Eliminating barriers to homeownership for members of protected class groups that have historically been denied an equal opportunity to become homeowners.

(ii) A fair housing goal to overcome segregation in specific neighborhoods and promote integration and fair housing choice in others could consist of expanding mobility programs to provide more housing opportunities in well-resourced areas of opportunity for individuals or families that utilize housing vouchers.

(iii) A fair housing goal to overcome disparities in access to affordable housing could consist of a PHA's revision of its own policies to provide more flexibility in admission criteria (for example, with respect to those who have previously faced eviction due to financial hardship or individuals who have been denied access to housing due to prior involvement in the justice system), efforts to combat source of income discrimination, and any necessary revisions to a PHA's eviction policies so individuals from protected class groups are not excluded from the PHA's programs or activities.

(iv) A fair housing goal to overcome inequitable access to high-performing schools could consist of realignment of school district boundaries, school zones, or school feeder patterns and increasing the funding for schools in R/ECAPs to ensure that members of historically underserved protected class groups have equitable access to educational opportunities regardless of where they live; such a goal could require multiple parts of the jurisdiction to work together to advance equity and may require leaders in the community to provide the political will for such a goal to be established and implemented.

(v) A fair housing goal to increase housing and neighborhood access could consist of reducing land use and zoning restrictions that limit housing supply and increase housing costs in order to ensure that members of historically underserved communities and protected class groups have equitable access to affordable housing opportunities in well-resourced areas throughout the jurisdiction.

(vi) A fair housing goal to ensure that underserved communities have equitable access to affordable housing opportunities, homeownership, and community assets may include amending local laws to include additional protections for certain underserved populations, such as LGBTQ+ persons or survivors of domestic violence, and may include the removal of barriers that exist in local laws such as nuisance or crime free ordinances, which may limit access to affordable housing because of protected characteristics.

(vii) A fair housing goal to overcome the fair housing issues of segregation and disparities in access to opportunity for individuals with disabilities due to a lack of accessible, affordable housing could include the incorporation of the provision of enhanced accessibility features (*e.g.,* features that provide greater accessibility than the minimum features required by accessibility standards) in new construction and rehabilitation of affordable housing to create greater access to integrated housing opportunities for individuals with disabilities.

(viii) A fair housing goal to enact source of income anti-discrimination laws, and/or to develop better enforcement strategies around such laws to ensure that underserved communities have equitable access to housing assistance programs, affordable housing opportunities, and community assets.

(4) Though program participants may not have direct or sole control over certain issues within their communities, HUD expects program participants to work closely with entities that have control of such issues to achieve fair housing outcomes. With respect to identified fair housing issues over which the program participant has

limited control, the program participant must consider the types of goals it can achieve that would ameliorate the effects of prioritized fair housing issues using the authority, tools, and influence it does have, including by collaborating with other program participants.

(5) Fair housing goals in the Equity Plan must not result in policies or practices that discriminate in violation of the Fair Housing Act or other Federal civil rights laws. Fair housing goals also may not require residents of racially or ethnically concentrated areas of poverty to move away from those areas if they prefer to stay in those areas as a matter of fair housing choice.

(6) In addition, fair housing goals must:

(i) Identify the fair housing issue(s) the goal is designed to address—for instance, where segregation in a development or geographic area is determined to be a fair housing issue, HUD expects the Equity Plan to establish one or more goals to reduce the segregation;

(ii) Explain how the goal, alone or in concert with other goals, will overcome the fair housing issue(s) it is designed to address;

(iii) Set timeframes for achievement of the goal, including metrics and milestones for how achievement of the goal will be measured; and

(iv) Describe the specific steps or actions that need to be taken to achieve the goal and the amount of funding that will be needed in order to fully achieve the goal.

(h) *Additional content.* (1) Program participants must include the following additional content as part of their Equity Plan submitted to HUD:

(i) A summary of the community engagement activities undertaken pursuant to § 5.158;

(ii) A description of how the program participant addressed the comments received through the community engagement process required by § 5.158;

(iii) As an attachment, all written comments received and transcripts or audio or video recordings of hearings held during the development of the Equity Plan; and

(iv) Signed certifications and assurances, as required by § 5.160.

(2) Program participants may include an executive summary or any other information the program participant believes relevant to the Equity Plan.

(i) *Progress evaluation.* (1) Program participants should engage in continual evaluation of their progress, but must do so no less frequently than once per year, to determine whether any changes, adjustments, or new information requires a revision to the Equity Plan or a subsequent planning document.

(2) Program participants must conduct and submit annual progress evaluations to HUD in a manner specified by the Responsible Civil Rights Official. The annual progress evaluation shall include the program participant's report on progress achieved under each fair housing goal, including whether goals have been fully achieved, and assessment of whether the fair housing goals established in the Equity Plan require adjustment because of changed circumstances or because they are unlikely to result in material positive change in overcoming fair housing issues. The program participants' annual progress evaluation must be accompanied by the signed certifications and assurances required by § 5.160 and shall be published on HUD-maintained web pages.

(3) For each Equity Plan submitted after the first Equity Plan submission, the program participant shall provide a summary of the progress achieved in meeting the fair housing goals set in the prior Equity Plan. This summary progress evaluation shall be part of the subsequent Equity Plan (and is distinct from the annual progress evaluations required by paragraphs (i)(1) and (2) of this section, but may include a compilation of those progress evaluations) subject to community engagement as part of the subsequent Equity Plan's development.

(4) All progress evaluations (*i.e.,* annual progress evaluations and summaries for purposes of subsequent Equity Plans) shall include, at minimum:

(i) An evaluation of the progress on each goal established in the prior Equity Plan, including whether the goal was achieved, some progress toward achieving the goal was made, or no progress toward achieving the goal was made;

(ii) An identification of any barriers that impeded the progress or achievement of the fair housing goals in the prior Equity Plan;

(iii) A description of any changes or adjustments to the goals undertaken during the prior Equity Plan cycle and how those changes or adjustments impacted the progress toward achievement of the goal;

(iv) A description of HUD funds or other Federal, State, local funds, or philanthropic support that were used toward achievement of the goal; and

(v) An explanation of the outcomes based on the achievement of the goal. For example, this explanation may include any results with respect to the reduction of segregation in a particular geographic area, increased access to opportunity by protected class groups, or other material positive change observed, including how the program participant advanced equity for members of protected class groups and underserved communities since the goal was implemented.

(j) *Publication.* The Equity Plan, progress evaluations, and HUD notifications related to Equity Plans shall be public documents.

(1) Program participants shall make drafts of the Equity Plan available pursuant to § 5.158 for purposes of community engagement.

(2) Upon submission of the Equity Plan to HUD, HUD will publish the submitted Equity Plan on a HUD-maintained web page and will update this web page to reflect the status of the Equity Plan pursuant to § 5.162. In particular, this web page will reflect whether an Equity Plan has been accepted and if an accepted Equity Plan differs from the initially submitted version. HUD may publish final Equity Plans or portions of such plans on other HUD-maintained web pages for the purposes of disseminating best practices and in a searchable information clearinghouse to benefit program participants and the general public. Program participants are also encouraged to post their HUD-reviewed Equity Plans on their official websites, in formats that satisfy civil rights requirements including title VI of the Civil Rights Act of 1964 and the regulation at 24 CFR part 1; section 504 of the Rehabilitation Act of 1973 and the regulation at 24 CFR part 8; and the Americans with Disabilities Act and the regulations at 28 CFR parts 35 and 36, as applicable.

(3) HUD will accept information from the public during its review of the submitted Equity Plan, consistent with § 5.162, relating to whether the Equity Plan was developed in accordance with the required community engagement, whether the content of a published Equity Plan is deficient, including whether fair housing issues were appropriately identified, whether the information provided during the community engagement process required by § 5.158 was appropriately incorporated into the Equity Plan, whether fair housing issues were appropriately prioritized, and whether the fair housing goals are appropriate, meaning that they are designed and can be reasonably expected to overcome the effects of the identified fair housing issues.

§ 5.156 Affirmatively furthering fair housing through Equity Plan incorporation into subsequent planning documents.

(a) *General.* It is the Department's policy to ensure that program funding is used to eliminate disparities resulting from Federal, State, and local laws, policies, and practices that have perpetuated segregation or denied equal opportunity because of a protected characteristic. Accordingly, any policies or practices adopted through program participants' planning documents or as part of program participants' implementation of programs, activities, and services shall be consistent with the commitments program participants have made in their Equity Plans, this part, and the AFFH mandate. By incorporating their fair housing goals, strategies, and actions into their planning documents, program participants will be better positioned to build equity and fairness into their decision-making processes for the use of resources and other investments, live up to the commitments they have made in Equity Plans, and ultimately fulfill their obligations to affirmatively further fair housing. A program participant must incorporate its implementation of these concepts and commitments in its Equity Plan into other planning documents, such as the consolidated plan, annual action plan, PHA Plan, disaster plan, or any plan incorporated therein.

(b) *Strategies and meaningful actions.* To implement the fair housing goals from the Equity Plan, program participants must include strategies and meaningful actions in their consolidated plans, annual action plans, and PHA Plans (including any plans incorporated therein). Program participants are only required to include the implementation of fair housing goals that are intended to be undertaken or funded in a particular program year in their annual action plans, though all fair housing goals must be incorporated into their 3–5-year consolidated or PHA Plans. Strategies and meaningful actions must affirmatively further fair housing and identify specific expected allocation of funding by program year for the use of HUD and other funds to implement each fair housing goal (if funding is necessary). Strategies and meaningful actions may include, but are not limited to: elimination of local laws or ordinances that are barriers to equitable access to homeownership or other affordable housing opportunities; enactment of local laws or ordinances that remove barriers or increase access to homeownership or other affordable housing opportunities; build strong fair housing and civil rights protections into State and local laws; enhancing mobility strategies and encouraging development of new affordable housing in well-resourced areas of opportunity; and place-based strategies and meaningful actions that are a part of a balanced approach, including preservation of existing HUD-assisted and other affordable housing.

(c) *Other planning activities or processes.* Program participants must incorporate the fair housing goals from their Equity Plans into planning documents required in connection with the receipt of Federal financial assistance from any other Federal executive department or agency. This incorporation shall include the allocation of resources necessary for achievement of the goal. The program participant's progress evaluation includes an evaluation of the goals incorporated into these other planning documents as required pursuant to § 5.154.

(d) *Meaning of approval or acceptance of planning documents.* Approval by HUD or any other agency of a planning document that must be approved or accepted by the Department or any other agency for purposes of program administration does not mean that the program participant has complied with the incorporation requirements set forth in this section or has otherwise complied with its obligation to affirmatively further fair housing or any other Federal fair housing and civil rights requirements.

(e) *Failure to incorporate fair housing goals into planning documents.* A program participant must incorporate the fair housing goals from its Equity Plan into its consolidated plan or PHA Plan in order to allocate funding for implementation of such goals as strategies and meaningful actions. Upon a determination by HUD that fair housing goals from the Equity Plan have not been incorporated into subsequent plans, and following notification to the program participant and opportunity for the program participant to respond and cure any deficiency, the Secretary may condition a grant (see *e.g.,* 2 CFR 200.208), obtain an assurance that the program participant will revise the plan to comply with the requirements of §§ 5.150 through 5.180 by a specified date, or may disapprove a consolidated plan or reject a PHA Plan consistent with 24 CFR 91.500 for consolidated plans and 24 CFR 903.23 for PHA Plans, or may take the actions set forth at §§ 5.170 and 5.172.

§ 5.158 Community engagement.

(a) *General.* (1) To ensure that the Equity Plan is informed by meaningful input from the community, program participants must engage with the public during the development of the Equity Plan, including with respect to both the identification of fair housing issues (including inequities faced by members of protected class groups and underserved communities) and the setting of fair housing goals to remedy the identified fair housing issues. Community engagement includes program participants' consideration of the views and recommendations received from members of the community and other interested parties.

(2) Program participants must proactively facilitate community engagement to ensure they receive and address information from the community regarding the effects of historical decisions and practices, current conditions, and other concerns relating to fair housing choice, equitable provision of services, access to opportunity, and specific fair housing issues. Members of the community are in a unique position to provide the program participant with perspectives on the impact of fair housing issues facing the community.

(3) To the extent practicable, program participants are permitted to combine this engagement with other community, resident, or citizen participation required for purposes of other HUD programs and planning processes; however, program participants are required to explain the Fair Housing Act's affirmatively furthering fair housing duty and ensure the engagement regarding the Equity Plan meets all the criteria set forth in this section.

(4) In addition, and in accordance with program regulations, the public shall have reasonable opportunity for involvement in the incorporation of the fair housing goals as strategies and meaningful actions into the consolidated plan, annual action plan, PHA Plan (and any plans incorporated therein), and other required planning documents.

(5) Program participants must employ communication methods designed to reach the broadest possible audience and should make efforts to reach members of protected class groups that have historically been denied equal opportunity and underserved communities. Such communications may include but are not limited to publishing a summary of each document on the program participant's official government website and one or more newspapers of general circulation, and by making copies of each document available on the internet (including free web-based social bulletin boards and

platforms), and as well at libraries, government offices, and public places.

(6) In order to comply with the obligation to affirmatively further fair housing, program participants must actively engage with a wide variety of diverse perspectives within their communities and use the information available in a manner that promotes the setting of meaningful fair housing goals that will lead to material positive change.

(7) Program participants must ensure that all aspects of community engagement are conducted in accordance with fair housing and civil rights requirements, including title VI of the Civil Rights Act of 1964 and the regulations at 24 CFR part 1; section 504 of the Rehabilitation Act of 1973 and the regulations at 24 CFR part 8; and the Americans with Disabilities Act and the regulations at 28 CFR parts 35 and 36, as applicable.

(8) A program participant may, if practicable, combine the requirements of this section with applicable public participation requirements of consolidated plan program participants and PHAs, subject to the following requirements:

(i) *Consolidated plan program participants.* The consolidated plan program participant may, if practical, combine the requirements of this section with its applicable citizen participation plan requirements, adopted pursuant to 24 CFR part 91 (see 24 CFR 91.105, 91.115, and 91.401). However, the community engagement for purposes of developing an Equity Plan must allow for sufficient opportunity for the community to have the in-depth discussions about fair housing issues required by this section. Therefore, to the extent the citizen participation plan does not provide for this opportunity, program participants must undertake separate engagement activities.

(ii) *PHAs.* To the extent practicable, PHAs may combine the requirements of this section when implementing the procedures described in 24 CFR 903.13, 903.15, 903.17, and 903.19 in the process of developing the Equity Plan, obtaining Resident Advisory Board and community feedback, and addressing complaints. The community engagement for purposes of developing an Equity Plan must allow for sufficient opportunity for the community to have the in-depth discussions about fair housing issues required by this section. Accordingly, to the extent the regulations at 24 CFR part 903 do not provide for this opportunity, PHAs must undertake separate engagement activities or incorporate such activities into the implementation of the specific, applicable program regulations.

(b) *Coordination.* (1) To the extent practicable, program participants submitting a joint Equity Plan may fulfill their community engagement responsibilities by combining efforts with other program participants by:

(i) Jointly conducting community engagement activities with a consolidated plan program participant;

(ii) Jointly conducting community engagement activities with one or more PHAs; or

(iii) Separately conducting community engagement activities.

(2) Joint program participants are encouraged to enter into Memoranda of Understanding (MOUs) to clearly define the functions, level of member participation, method of dispute resolution, and decision-making process of the program participants, for purposes of engaging with the community as well as in the development of the Equity Plan.

(c) *Frequency.* (1) Program participants must engage with their communities prior to and during the development of an Equity Plan.

(2) While the Equity Plan is in effect, program participants must engage with their communities on at least an annual basis. To the extent practicable, this engagement may be combined with any citizen participation or resident participation for purposes of developing annual plans pursuant to program requirements. The purpose of such annual engagement shall be to receive community input as to whether the program participant is taking effective and necessary actions to implement the Equity Plan's fair housing goals, whether adjustments to goals need to be made, and whether a change in circumstance may require a revision of the Equity Plan pursuant to § 5.164, including the formulation of additional goals.

(d) *Methods.* Program participants may choose any methods that are effective in engaging their communities, but at minimum must employ the following methods:

(1) For the development of an Equity Plan, hold at least three (3) public meetings, at various accessible locations and at different times to ensure that members of protected class groups and underserved communities are afforded opportunities to provide input. At least one such meeting shall be held in a location in the jurisdiction in which underserved communities disproportionately reside and efforts to obtain input from underserved populations who do not live in underserved neighborhoods shall also be employed;

(2) For the annual engagement, hold at least two (2) public meetings, at different locations, one of which shall be located in an area of the jurisdiction in which underserved communities predominantly reside;

(3) Connect with and provide information about fair housing planning to local community leaders, which may include, but are not limited to advocates, community-based organizations, clergy, healthcare professionals, educational leaders or teachers, and other service providers such as social workers and case managers to provide and solicit the views of the communities they serve; and

(4) Make available to the public data and information demonstrating the existence of fair housing issues (including segregated areas).

§ 5.160 Submission requirements.

(a) *General.* Program participants must submit an Equity Plan to HUD for review pursuant to the schedule set forth in this section. Program participants may submit an individual Equity Plan or may collaborate with other program participants (joint program participants) to submit a joint Equity Plan.

(1) Goals in an individual Equity Plan may contemplate and include coordination or collaboration with other program participants or other public or private entities even if those entities are not part of a joint Equity Plan.

(2) Program participants are encouraged to collaborate to conduct and submit a single Equity Plan (*i.e.,* a joint Equity Plan) for the purpose of sharing resources and developing partnerships to address fair housing issues. When collaborating to submit a joint Equity Plan, joint program participants may divide work as they choose, but all program participants are accountable for any joint analysis and any joint fair housing goals. Program participants are accountable for their individual analysis and fair housing goals included in the joint Equity Plan. Participation in a joint Equity Plan does not relieve each program participant from its obligation to analyze and address fair housing issues by setting goals and implementing strategies and meaningful actions to overcome the effects of any identified fair housing issues. Each program participant must sign the joint Equity Plan and associated certifications and assurances submitted to HUD.

(i) Program participants that are either not located within the same CBSA or

that are not located within the same State that seek to collaborate on a joint Equity Plan must submit a written request to HUD for approval of the collaboration, stating why the collaboration is appropriate. The written request must be submitted not less than 180 days before the start of the development of the joint Equity Plan. The joint Equity Plan may not proceed until such time as the Responsible Civil Rights Official approves the collaboration.

(ii) All other joint Equity Plan program participants must promptly notify HUD of their intent to collaborate, but need not obtain HUD approval prior to conducting the joint Equity Plan. The notification to HUD must include a copy of their written agreement.

(iii) Program participants must designate, through express written consent, one program participant to serve as the lead entity to oversee the submission of the joint Equity Plan. The notification to HUD of the collaboration shall include the identification of the lead entity.

(iv) The submission schedule for the joint Equity Plan shall be the schedule that ordinarily would apply to the joint Equity Plan's lead entity unless the Responsible Civil Rights Official determines that an earlier submission is required for good cause, in which case the Responsible Civil Rights Official will designate an earlier submission date that provides the collaborating program participants a reasonable amount of time to develop and submit a joint Equity Plan.

(v) Program participants conducting a joint Equity Plan must have a plan for community engagement that complies with the requirements of §§ 5.150 through 5.180, and must include the jurisdictions of each program participant, not just that of the lead entity. A material change that requires the revision of an Equity Plan pursuant to § 5.164 for any program participant that is part of a joint Equity Plan will trigger a requirement to revise the joint Equity Plan, including any necessary community engagement.

(vi) Program participants conducting a joint Equity Plan may determine that it would be practicable to align program and fiscal years according to the procedures set forth at 24 CFR 91.10 and 24 CFR part 903, as applicable for purposes of the submission schedule set forth in this section. To the extent that alignment of program and fiscal years is not practicable, a program participant may be required by the Secretary to make appropriate revisions to its full consolidated plan or PHA Plan, or any plan incorporated therein, that was approved by HUD prior to the submission and HUD review of the joint Equity Plan in order to appropriately incorporate strategies and meaningful actions to implement the fair housing goals from the joint Equity Plan.

(vii) A program participant that, for any reason, decides to withdraw from a previously arranged joint Equity Plan must promptly notify HUD of the withdrawal. HUD will work with the withdrawing program participant, as well as the remaining program participants conducting the joint Equity Plan, to determine whether a new submission date is needed for the withdrawing participant or the remaining participants. If a new submission date is needed for the withdrawing participant or the remaining participants, HUD will establish a submission date for the program participant's individual Equity Plan that is as close as feasible to the originally intended submission date and is no later than the original submission date for the joint Equity Plan, unless good cause for an extension is shown, as determined by the Responsible Civil Rights Official.

(b) *Submission of first Equity Plan—consolidated plan program participants.* (1) For each program participant that receives a total of $100 million or more in formula grant funds from programs that are subject to the consolidated plan requirements for the program year that begins on or after January 1, 2024, the first Equity Plan shall be submitted by 24 months after [effective date of final rule], or 365 calendar days prior to the date for which a new consolidated plan is due, whichever is earlier.

(2) For each program participant that receives a total of $30–99 million in formula grant funds for the program year that begins on or after January 1, 2025, the first Equity Plan shall be submitted no later than 365 calendar days prior to the date for which a new consolidated plan is due.

(3) For each program participant that receives a total of $1–29 million in formula grant funds for the program year that begins on or after January 1, 2026, the first Equity Plan shall be submitted no later than 365 calendar days prior to the date for which a new consolidated plan is due.

(4) For each program participant that receives a total of less than $1 million in formula grant funds for the program year that begins on or after January 1, 2027, the first Equity Plan shall be submitted no later than 365 calendar days prior to the date for which a new consolidated plan is due.

(c) *Submission of first Equity Plan—public housing agencies (PHAs).* For purposes of determining the PHA's total number of public housing units and vouchers, the inventory shall be determined as of [effective date of final rule].

(1) For each PHA with a combined total number of public housing units and vouchers of 50,000 or more, the first Equity Plan shall be submitted no later than 24 months after [effective date of final rule], or 365 calendar days prior to the date for which a new 5-year plan is due following the start of the fiscal year that begins on or after January 1, 2024, whichever is earlier.

(2) For each PHA with a combined total number of public housing units and vouchers between 10,000 and 49,999, the first Equity Plan shall be submitted no later than 365 calendar days prior to the date for which a new 5-year plan is due following the start of the fiscal year that begins on or after January 1, 2025.

(3) For each PHA with a combined total number of public housing units and vouchers between 1,000 and 9,999 or PHAs that operate statewide, which includes certain Qualified PHAs, the first Equity Plan shall be submitted no later than 365 calendar days prior to the date for which a new 5-year plan is due following the start of the fiscal year that begins on or after January 1, 2026.

(4) For each PHA with a combined total number of public housing units and vouchers that is less than 1,000, the first Equity Plan shall be submitted no later than 365 calendar days prior to the date for which a new 5-year plan is due following the start of the fiscal year that begins on or after January 1, 2027.

(d) *How to comply with AFFH planning and certification requirements until first Equity Plan submission.* (1) Except as provided in paragraph (e) of this section, until such time as a program participant submits or is required to submit an Equity Plan, the program participant shall engage in fair housing planning (*e.g.,* prepare an Analysis of Impediments to Fair Housing Choice, Assessment of Fair Housing, or other fair housing plan). Program participants that have not conducted or updated their fair housing plans for more than three years prior to [effective date of final rule], and who are not required to submit an Equity Plan pursuant to paragraph (b) or (c) of this section within twenty-four months of [effective date of final rule], shall either conduct or update their fair housing plans (*i.e.,* Analysis of Impediments to Fair Housing Choice, Assessment of Fair Housing, or other fair housing plan) and submit such plan to HUD for publication and potential review no later than 365 days from [effective date

of final rule]. Program participants that have conducted or updated their fair housing plans during the three years prior to [effective date of final rule], are not required to undertake additional updates pursuant to this paragraph (d)(1), but must submit their existing fair housing plan to the Department for publication and potential review no later than 120 days from [effective date of final rule]. Program participants may, alternatively, conduct an Equity Plan in advance of when such plan would otherwise be due for submission to HUD pursuant to paragraph (b) or (c) of this section. The Responsible Civil Rights Official may review and provide feedback on a program participant's submitted fair housing plan. If the Secretary determines there is evidence that challenges the accuracy of the program participant's certification that it will affirmatively further fair housing, the Secretary will provide written notification to the program participant of such a determination consistent with 24 CFR 91.500 for consolidated plans and 24 CFR 903.23 for PHA Plans and § 5.162. The Responsible Civil Rights Official's review of a fair housing plan under this paragraph (d)(1) may also provide reason for the initiation of a compliance review pursuant to § 5.170.

(2) Program participants shall continue to update their fair housing plans at least every five years and submit updated plans to HUD for publication and potential review until such time as the program participant is required to begin preparing its Equity Plan for submission to HUD.

(e) *New program participants.* For a new program participant that has not submitted a consolidated plan or PHA Plan as of [*30 days after date of publication of final rule*], HUD will provide the new program participant with a deadline for submission of its first Equity Plan, which shall be at least 24 months after the date for which the program participant's first consolidated plan or PHA Plan is due. Prior to the submission of its first Equity Plan, new program participants are required to affirmatively further fair housing and engage in fair housing planning during the development of its first consolidated or PHA Plan.

(f) *Annual progress evaluations.* Program participants shall, in accordance with § 5.154(h), submit annual progress evaluations to the Responsible Civil Rights Official, which shall be accompanied by the certifications and assurances in paragraph (i) of this section. The first annual progress evaluation shall be submitted for publication and review no later than 365 days from the date of HUD's notification that the Equity Plan is accepted, and subsequent progress evaluations shall be submitted for publication and review no later than 365 days from the date of the last progress evaluation submitted.

(g) *Second and subsequent Equity Plans.* Following the first Equity Plan, for all program participants, subsequent Equity Plans shall be submitted for publication and review 365 days before the date for which a new 3- to 5-year consolidated plan or PHA Plan is due (as applicable).

(h) *Frequency.* All program participants shall submit an Equity Plan no less frequently than once every 5 years, or at such time agreed upon in writing by the Responsible Civil Rights Official and the program participant, as necessary to remedy or avoid noncompliance with Federal fair housing and civil rights requirements.

(i) *Equity Plan certifications and assurances.* Each program participant, including program participants submitting a joint Equity Plan, must include the following certifications and assurances with each Equity Plan and annual progress evaluation submitted to HUD:

(1) The program participant's statements and information contained in the Equity Plan submitted to HUD are true, accurate, and complete and that the program participant developed the Equity Plan in compliance with the requirements of §§ 5.150 through 5.180.

(2) The program participant will take meaningful actions to implement the goals established in its Equity Plan conducted in accordance with the requirements of §§ 5.150 through 5.180 and 24 CFR 91.225(a)(1), 91.325(a)(1), 91.425(a)(1), 570.487(b)(1), 570.601, 903.7(o), and 903.15(d), as applicable, which require that the program participant will affirmatively further fair housing. In addition, the program participant will take no action that is materially inconsistent with the duty to affirmatively further fair housing.

(3) The program participant shall submit, in conjunction with the Equity Plan submitted to HUD, an assurance to HUD that its programs, activities, and services are operated in compliance with the requirements of §§ 5.150 through 5.180 and in a manner that affirmatively furthers fair housing, as well as that its programs, activities, and services are operated in compliance with Federal fair housing and civil rights nondiscrimination requirements. The assurance shall obligate the program participant to comply with §§ 5.150 through 5.180 for the full period during which Federal financial assistance is extended.

§ 5.162 Review of Equity Plan.

(a) *HUD review of submitted Equity Plan*—(1) *General.* HUD's review of an Equity Plan is to determine whether the program participant has developed an Equity Plan that includes the required analysis, identification of fair housing issues, and establishment of fair housing goals, as set forth in § 5.154. HUD will promptly publish each submitted Equity Plan on HUD-maintained web pages. Members of the public may submit comments regarding the submitted Equity Plan to HUD in a manner specified by the Responsible Civil Rights Official during the timeframe for HUD's review and should do so no later than 60 days from the date the Equity Plan is submitted to HUD. The timeframe for submission of comments may be extended for good cause by the Responsible Civil Rights Official. Providing comments on a submitted Equity Plan pursuant to this paragraph (a)(1) is distinct from the filing of complaints pursuant to § 5.170.

(2) *HUD review.* Within 100 calendar days after the date HUD receives the Equity Plan, HUD will accept the Equity Plan unless on or before that date the Responsible Civil Rights Official provides the program participant notification that the date is extended for good cause or that HUD does not accept the Equity Plan. If HUD does not accept the Equity Plan, in its notification, HUD will inform the program participant in writing of the reasons why HUD has not accepted the Equity Plan and actions the program participant may take to resolve the nonacceptance. HUD will publish any written feedback that it provides on accepted Equity Plans, as well as notifications of non-acceptance, and related notifications and communications on HUD-maintained web pages. HUD ordinarily will review an Equity Plan before acceptance, though an Equity Plan may be accepted without HUD review due to infeasibility or other exigent circumstances beyond HUD's control.

(3) *Meaning of HUD acceptance of an Equity Plan.* HUD's acceptance of an Equity Plan means only that, for purposes of administering HUD program funding, HUD has not found that the program participant has failed to comply with the required elements, as set forth in § 5.154. HUD's acceptance of an Equity Plan does not mean that the program participant has complied with its obligation to affirmatively further fair housing under the Fair Housing Act; has complied with other provisions of the Fair Housing Act; or has complied with other civil rights laws and regulations. HUD's acceptance of an Equity Plan also

does not limit HUD's ability to undertake an investigation pursuant to § 5.170.

(b) *Nonacceptance of an Equity Plan.* (1) The Responsible Civil Rights Official will not accept an Equity Plan if the Equity Plan or a portion of the Equity Plan is inconsistent with fair housing or civil rights requirements, which includes but is not limited to any material noncompliance with the requirements of §§ 5.150 through 5.180. In connection with a joint Equity Plan, HUD's determination to not accept the Equity Plan with respect to one program participant does not necessarily affect the status of the Equity Plan with respect to another program participant. The following are non-exclusive examples of an Equity Plan that is inconsistent with fair housing and civil rights requirements:

(i) HUD determines that the analysis of fair housing issues and fair housing goals contained in the Equity Plan would result in policies or practices that would operate to discriminate in violation of the Fair Housing Act or other civil rights laws;

(ii) The Equity Plan does not identify local policies or practices as fair housing issues when such policies or practices pose a barrier to equity;

(iii) The fair housing goals contained in the Equity Plan are not designed and cannot be reasonably expected to result in a material positive change with respect to one or more identified and prioritized fair housing issues;

(iv) The fair housing goals contained in the Equity Plan merely consist of actions already required to comply with nondiscrimination requirements (*e.g.,* establishing a process for reviewing, making, and documenting decisions on reasonable accommodation requests received by the program participant);

(v) The Equity Plan was developed without the required community engagement;

(vi) The Equity Plan contains an analysis in which the identification of fair housing issues or the established fair housing goals are materially inconsistent with the data or other evidence available to the program participant, or in which fair housing goals are not designed to overcome the effects of identified fair housing issues as required by §§ 5.150 through 5.180;

(vii) The Equity Plan fails to acknowledge the existence of a fair housing issue identified during community engagement; or

(viii) The Equity Plan does not contain the required certifications and assurances pursuant to § 5.160.

(2) HUD will provide written notification to the program participant, including each program participant involved in a joint Equity Plan, explaining HUD's decision to accept or not accept the Equity Plan. For Equity Plans that are not accepted, the written notification will provide guidance on how a non-accepted Equity Plan may be revised to achieve acceptance and how a program participant may request reconsideration by the Reviewing Civil Rights Official of HUD's non-acceptance of an Equity Plan, including by submitting clarifying information that may be sufficient to address the concerns raised in HUD's notification of non-acceptance. HUD will provide a decision on the request for reconsideration in advance of the deadline to resubmit a revised Equity Plan. To provide transparency regarding the status of program participants' Equity Plans, HUD will publish all such notifications on HUD-maintained web pages.

(c) *Revisions and resubmission.* In HUD's notification of non-acceptance, HUD will provide a program participant, including each program participant involved in a joint Equity Plan, with a reasonable time period to revise and resubmit the Equity Plan. All revisions or resubmissions, and any HUD notifications relating to revisions and resubmissions, shall be published on HUD-maintained web pages.

(1) If HUD does not accept the Equity Plan, HUD will provide written notification to the program participant and shall provide no more than 60 calendar days after the date of HUD's notification to revise and resubmit the Equity Plan. HUD may extend this date for good cause.

(2) The revised Equity Plan will be reviewed by HUD within 75 calendar days of the date by which HUD receives the revised Equity Plan. HUD may provide notification that HUD does not accept the revised Equity Plan on or before that date. If HUD does not accept the revision, the procedures set forth in this section will continue to apply until such time as the program participant's revised Equity Plan has been accepted by HUD or the Responsible Civil Rights Official instead determines that a different procedure is necessary to ensure compliance, such as the procedures set forth at § 5.172.

(3) If a program participant's Equity Plan is accepted by HUD and the program participant voluntarily revises its Equity Plan in response to feedback contained in HUD's notification of acceptance, the revised Plan shall be submitted no later than 120 days following the date of HUD's notification of acceptance of the Equity Plan. If the revised Equity Plan does not meet the requirements set forth in §§ 5.150 through 5.180, HUD will not accept the revision, and the previously accepted Equity Plan will remain in effect. If HUD determines a revision is necessary pursuant to the requirements of this section, the procedures set forth in this section will continue to apply until such time as the program participant's revised Equity Plan has been accepted by HUD or the Responsible Civil Rights Official instead determines that a different procedure is necessary to ensure compliance, such as the procedures set forth at § 5.172.

(d) *Incentives.* At its discretion and consistent with applicable laws and program objectives, HUD may establish incentives or other ways to recognize program participants that set ambitious goals that are designed and can be reasonably expected to overcome challenging fair housing issues. These incentives may include HUD recognizing the value of relevant, effective fair housing goals when HUD establishes the criteria for evaluating applications for discretionary funding. Program participants are encouraged to include implementation of fair housing goals from their Equity Plans in subsequent applications to HUD for discretionary funding for purposes of securing additional resources to implement such goals.

(e) *Failure to have an accepted Equity Plan at the time of submission of the consolidated plan or PHA Plan.* (1) At the time a program participant submits its consolidated plan or PHA Plan, as applicable, the program participant must have either a current, accepted Equity Plan or must have executed special assurances that require the program participant to submit and obtain HUD's acceptance of its Equity Plan by a specified date following the end of HUD's review period for the consolidated plan or PHA Plan. A program participant's failure to provide the required special assurances will lead to the disapproval of a consolidated plan or PHA Plan, and a program participant's failure to provide or comply with special assurances will jeopardize funding in accordance with §§ 5.172 and 5.174. Failure to provide or comply with special assurances may constitute evidence that a program participant's AFFH certification is inaccurate pursuant to 24 CFR 91.500 or that the program participant's AFFH certification appears inaccurate pursuant to 24 CFR 903.15, providing the Secretary a basis to challenge the validity of the AFFH certification pursuant to § 5.166.

(i) If a consolidated plan program participant does not have an Equity Plan

that has been accepted by HUD as provided by § 5.160 at the time the program participant submits its consolidated plan, the Responsible Civil Rights Official shall obtain special assurances prior to the date the consolidated plan must be disapproved pursuant to 24 CFR 91.500 (*i.e.,* within 45 days of the date the consolidated plan is submitted to HUD); if a program participant fails to provide such special assurances, HUD will initiate the disapproval of the consolidated plan. The special assurances shall:

(A) Require the program participant to achieve an accepted Equity Plan that meets the requirements of §§ 5.150 through 5.180 no later than 180 days following the end of HUD's 45-day review period for the consolidated plan;

(B) Set out a date, consistent with that deadline, by which the program participant shall submit its Equity Plan to HUD for review; and

(C) Require the program participant to amend its consolidated plan to incorporate the fair housing goals of the accepted Equity Plan no later than 180 days from the date the Equity Plan is accepted by HUD.

(ii) If a PHA does not have an Equity Plan that has been accepted by HUD as provided by § 5.160 at the time the program participant submits its PHA Plan, the Responsible Civil Rights Official shall obtain special assurances prior to the date the PHA Plan must be disapproved pursuant to 24 CFR 903.23 (*i.e.,* 75 days from the date the PHA Plan is submitted to HUD); if a program participant fails to provide such special assurances, HUD will disapprove the PHA Plan. The special assurances shall:

(A) Require the program participant to achieve an accepted Equity Plan that meets the requirements of §§ 5.150 through 5.180 no later than 180 days following the end of HUD's 75-day review period for the PHA Plan;

(B) Set out a date, consistent with that deadline, by which the program participant shall submit its Equity Plan to HUD for review; and

(C) Require the program participant to amend its PHA Plan to incorporate the fair housing goals of the accepted Equity Plan no later than 180 days from the date the Equity Plan is accepted by HUD.

(2) Upon a determination by the Secretary that the program participant has failed to submit an Equity Plan that meets the requirements of §§ 5.150 through 5.180, and after the 180-day period described in any applicable special assurance has expired, the following shall apply.

(i) With respect to a consolidated plan program participant:

(A) The Secretary shall promptly initiate termination of funding;

(B) The Secretary shall refuse to grant or not continue granting applicable Federal financial assistance until such time as the program participant comes into compliance; and

(C) The Secretary shall follow the procedures at § 5.172 to effect these remedies.

(ii) With respect to a PHA:

(A) The Secretary shall notify the PHA that it is in substantial default;

(B) The Secretary shall take any other action authorized by law to effect compliance; and

(C) The Secretary shall follow the procedures at § 5.172 to effect these remedies.

(3) Special assurances and any submission of an Equity Plan, including HUD's decision to accept or not accept the Equity Plan shall be subject to the publication requirement at § 5.154(j). Such publication shall indicate whether the special assurances have been satisfied as part of HUD's decision to accept the Equity Plan.

§ 5.164 Revising an accepted Equity Plan.

(a) *General—circumstances for revising an Equity Plan.* (1) An Equity Plan previously accepted by HUD must be revised and submitted to HUD for review under the following circumstances:

(i) A material change occurs. A material change is a change in circumstances in a program participant's jurisdiction that affects the information on which the Equity Plan is based to the extent that the analysis and fair housing goals of the Equity Plan no longer reflect actual circumstances. An Equity Plan must be revised in the event of a presidentially declared disaster that impacts a program participant's jurisdiction and is expected to result in additional Federal financial assistance for the jurisdiction, under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*); or

(ii) Upon the Responsible Civil Rights Official's written notification specifying a material change that requires the revision.

(2) An Equity Plan previously accepted by HUD may be revised and submitted to HUD for review under the following circumstances:

(i) If there are changes in the program participant's geographic area of analysis that significantly impact the steps a program participant may need to take to affirmatively further fair housing;

(ii) A fair housing goal established in the Equity Plan cannot be achieved;

(iii) Significant demographic changes occur;

(iv) New fair housing issues emerge in the jurisdiction;

(v) Short-term fair housing goals have been achieved;

(vi) Civil rights findings, determinations, settlements (including Voluntary Compliance Agreements), or court orders are entered; or

(vii) The program participant advises HUD of a change that similarly may merit the program participant's submission of a revised Equity Plan, and HUD grants the program participant permission to submit a revised Equity Plan by a specific date for HUD review.

(3) *Requirements for revisions of an Equity Plan.* A revision pursuant to paragraph (a)(1) or (2) of this section consists of preparing any necessary amended analyses and fair housing goals that take into account the change, including any new fair housing issues. A revision may not necessarily require the submission of an entirely new Equity Plan and a program participant may focus only on the change and the appropriate and necessary adjustments to the analysis and fair housing goals, but any revision shall trigger the program participant's obligation to conduct community engagement on the amended portions of the Equity Plan pursuant to the requirements at § 5.158.

(b) *Timeframe for required revisions.* (1) Where a revision is undertaken pursuant to paragraph (a)(1)(i) of this section, such revision shall be submitted within 12 months of the onset of the material change, or at such later date as the Responsible Civil Rights Official may provide. When the material change is the result of a presidentially declared disaster, such time shall be automatically extended to the date that is 2 years after the date upon which the disaster declaration is made, and the Responsible Civil Rights Official may extend such deadline, upon request, for good cause shown.

(2)(i) When a revision is required under paragraph (a)(1)(ii) of this section, the Responsible Civil Rights Official will specify a date by which the program participant must submit the revision of the Equity Plan to HUD, considering the material change and the need for a valid Equity Plan to guide planning activities. The Responsible Civil Rights Official may extend the due date upon written request by the program participant that describes the reasons the program participant is unable to satisfy the deadline for submitting a revised Equity Plan.

(ii) On or before 30 calendar days following the date of HUD's written notification under paragraph (a)(1)(ii) of this section, the program participant may advise the Responsible Civil Rights

Official in writing of its belief that a revision to the Equity Plan is not required. The program participant must state with specificity the reasons for its belief that a revision is not required. The Responsible Civil Rights Official will take into account any such response and issue to the program participant in writing a determination as to whether the program participant must proceed with the revision. The Responsible Civil Rights Official may establish a new due date that is later than the date specified in the original notification.

(c) *Submission of the revised Equity Plan.* Upon completion, any revision to the Equity Plan must be submitted to HUD and will be published in accordance with § 5.154(j). The revised Equity Plan will follow the same procedures for HUD review at § 5.162.

(d) *Incorporation of revised fair housing goals into subsequent planning documents.* Upon HUD's notice that the revised Equity Plan has been accepted, the program participant shall, within 12 months, incorporate any revised fair housing goals into its consolidated plan, annual action plan, or PHA Plan, or any plan incorporated therein.

§ 5.166 AFFH certifications required for the receipt of Federal financial assistance.

(a) *Certifications.* Prior to the receipt of Federal financial assistance, program participants must certify that they will affirmatively further fair housing, which means engaging in fair housing planning and taking meaningful actions in accordance with the requirements of §§ 5.150 through 5.180 and 24 CFR 91.225, 91.325, 91.425, 570.487, 570.601, 903.7, and 903.15, and take no action that is materially inconsistent with the duty to affirmatively further fair housing throughout the period for which Federal financial assistance is extended. Such certifications must be made in accordance with applicable program regulations, specifically 24 CFR part 91 for consolidated plan program participants and 24 CFR part 903 for PHAs.

(b) *Procedures for challenging the validity of an AFFH certification*—(1) *Consolidated plan program participants.* If HUD has evidence that could be used to challenge the accuracy of a program participant's AFFH certification, the Secretary may provide written notice of the intent to reject the program participant's AFFH certification as inaccurate. The notice will include the evidence challenging the accuracy of the AFFH certification and provide the program participant an opportunity to comment and submit additional evidence to the Secretary in support of the AFFH certification. The notice may include other actions the program participant may take for the Secretary to accept the AFFH certification, including conditions (see *e.g.,* 2 CFR 200.208). The failure to comply with the conditions established by the Secretary may trigger the procedures set forth in § 5.172. The notice will also provide a date by which the program participant must respond. After consideration of the evidence and any other actions taken by the program participant, if the Secretary determines that the AFFH certification is inaccurate, the Secretary may reject the certification consistent with 24 CFR 91.500.

(2) *PHAs.* If, consistent with the criteria at 24 CFR 903.15, HUD challenges the validity of a PHA's certification, HUD will do so in writing, specifying the deficiencies, and will give the PHA an opportunity to respond to the particular challenge in writing. In responding to the specified deficiencies, a PHA must establish, as applicable, that it has complied with fair housing and civil rights laws and regulations and has adopted policies and undertaken actions to affirmatively further fair housing, including but not limited to, providing a full range of housing opportunities to applicants and tenants and taking affirmative steps as described in 24 CFR 903.15(c)(2) in a nondiscriminatory manner. In responding to the PHA, HUD may accept the PHA's explanation and withdraw the challenge, undertake further investigation, or pursue other remedies available under law. HUD will seek to obtain voluntary corrective action consistent with the specified deficiencies. In determining whether a PHA has complied with its certification, HUD will review the PHA's circumstances, including characteristics of the population served by the PHA; characteristics of the PHA's existing housing stock; and decisions, plans, goals, priorities, strategies, and actions of the PHA, including those designed to affirmatively further fair housing. If the PHA has not resolved the identified deficiencies, the Secretary may pursue any other appropriate remedies under law, including:

(i) Requiring the PHA to revise and resubmit its PHA Plan and corresponding certifications in a manner that would demonstrate the PHA's certifications are valid;

(ii) Requiring the execution of a Voluntary Compliance Agreement that permits the Secretary to determine the PHA's certifications are valid; or

(iii) Finding the PHA in substantial default on an Annual Contributions Contract.

(3) *Joint Equity Plans.* In the case of a joint Equity Plan, if the Secretary rejects the AFFH certification for one program participant's consolidated plan, annual action plan, or PHA Plan, this rejection shall not affect the certifications of the other joint program participants unless the Secretary provides written notification to each program participant. The Secretary shall employ the procedures set forth in paragraph (b)(1) or (2) of this section, depending on whether the program participant is a consolidated plan program participant or a PHA.

§ 5.168 Recordkeeping.

Each program participant must establish and maintain sufficient records to enable the Responsible Civil Rights Official to determine whether the program participant has complied with or is complying with the requirements of this subpart. A PHA not preparing its own Equity Plan in accordance with 24 CFR 903.15(a)(3) must maintain a copy of the applicable Equity Plan and records reflecting actions to affirmatively further fair housing as described in 24 CFR 903.7(o). All program participants shall permit access by the Responsible Civil Rights Official during normal business hours to its electronically stored information, books, records, accounts, and other sources of information, and its facilities, as may be pertinent to ascertain compliance with §§ 5.150 through 5.180. Where any information required of a program participant is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person fails or refuses to furnish this information, the program participant shall so certify to the Responsible Civil Rights Official and set forth what efforts the program participant made to obtain the information. At a minimum, the following records, which may be maintained and provided in electronic format, are needed for each consolidated plan program participant and each PHA that prepares its own Equity Plan:

(a) Information and records relating to the program participant's Equity Plan and any significant revisions to the Equity Plan, including, but not limited to, statistical data, studies, and other diagnostic tools used by the jurisdiction; and any policies, procedures, or other documents relating to the analysis or preparation of the Equity Plan;

(b) Records demonstrating compliance with the community engagement requirements of §§ 5.150 through 5.180,

including the names of organizations involved in the development of the Equity Plan, summaries or transcripts of public meetings or hearings, written public comments, public notices and other correspondence, distribution lists, surveys, or interviews (as applicable);

(c) Records demonstrating the meaningful actions the program participant has taken to affirmatively further fair housing, including activities carried out in furtherance of the Equity Plan; the program participant's fair housing goals set forth in its Equity Plan, and strategies and meaningful actions, including funding allocations in its consolidated plan, or PHA Plan, and any plan incorporated therein; and the actions the program participant has carried out to implement the fair housing goals identified in accordance with § 5.154 during the preceding 5 years;

(d) Where a court or an agency of the United States Government or of a State government has found that the program participant has violated any applicable nondiscrimination and equal opportunity requirement set forth in § 5.105(a) or any applicable civil rights-related program requirement, documentation related to the underlying judicial or administrative finding and affirmative measures that the program participant has taken in response;

(e) Documentation relating to the program participant's efforts to ensure that housing and community development activities (including those assisted under programs administered by HUD) are in compliance with applicable nondiscrimination and equal opportunity requirements set forth in § 5.105(a) and applicable civil rights related program requirements;

(f) Records demonstrating that consortium members, units of general local government receiving allocations from a State, or units of general local government participating in an urban county have conducted their own or contributed to the jurisdiction's Equity Plan (as applicable) and documents demonstrating their meaningful actions to affirmatively further fair housing;

(g) Evidence of the program participant's or its subrecipients' certifications and assurances of compliance in accordance with §§ 5.160 and 5.162(e), or any other civil rights-related certifications and assurances required in connection with the receipt of Federal financial assistance; and

(h) Any other evidence relied upon by the program participant to support its affirmatively furthering fair housing certifications and assurances.

§ 5.170 Compliance procedures.

(a) *Complaints.* (1) Complaints may be submitted by an individual, association, or other organization that alleges that a program participant has failed to comply with this subpart, noncompliance with the program participant's commitments made under this subpart, or that the program participant has taken action that is materially inconsistent with the obligation to affirmatively further fair housing, as defined in § 5.152.

(2) Complaints related to the Equity Plan, the requirements of §§ 5.150 through 5.180, and the AFFH obligation may be submitted to the Responsible Civil Rights Official. The Responsible Civil Rights Official shall process the complaint in accordance with the procedures set forth in this section and, upon the acceptance of a complaint, the Responsible Civil Rights Official will provide notification to the complainant and the program participant. If the Responsible Civil Rights Official determines a complaint does not contain sufficient information, the Responsible Civil Rights Official will notify the complainant and specify the additional information needed to complete the complaint. If the complainant fails to complete this complaint within a timeframe established by the Responsible Civil Rights Official, the Responsible Civil Rights Official will close the complaint without prejudice.

(3) Complaints shall be filed within 365 days of date of the last incident of the alleged violation, unless the Responsible Civil Rights Official extends the time limit for good cause shown.

(b) *Investigations and compliance reviews.* (1) The Responsible Civil Rights Official shall investigate complaints and may periodically conduct reviews of program participants in order to ascertain whether there has been a failure to comply with this subpart or the program participant's obligation to affirmatively further fair housing under the Fair Housing Act. If the investigation implicates an alleged failure to comply with any other Federal civil rights law for which HUD has jurisdiction, the notification provided pursuant to paragraph (a)(2) of this section shall include notification that the investigation will also involve a review under those laws.

(2) The Responsible Civil Rights Official may conduct interviews, request records, and obtain other information required to be maintained by the program participant pursuant to § 5.168 in furtherance of the investigation and in order to determine whether there has been noncompliance with §§ 5.150 through 5.180 or the program participant's obligation to affirmatively further fair housing.

(3) Where appropriate, the Responsible Civil Rights Official shall attempt informal resolution of any matter being investigated under this section. If voluntary resolution is not achieved and a violation is found, the Responsible Civil Rights Official shall issue a Letter of Findings to the program participant and complainant, if any.

(4) The Letter of Findings shall include:

(i) Findings of fact and conclusions of law;

(ii) A description of a remedy for each violation found;

(iii) Notice of the rights and procedures under this paragraph (b) and §§ 5.172 and 5.174; and

(iv) Notice of the right of the program participant or complainant, if any, to request review of the Letter of Findings not later than 30 calendar days from the date of issuance of the Letter of Findings by mailing or delivering to the Reviewing Civil Rights Official, Office of Fair Housing and Equal Opportunity, Washington, DC 20410, a written statement of the reasons why the letter of findings should be modified in light of supplementary information provided by the program participant or complainant, if any.

(5) Upon receipt of a request for review of the Letter of Findings, the Reviewing Civil Rights Official shall either sustain or modify the Letter of Findings, which will occur within 120 days, subject to extension for good cause as determined by the Reviewing Civil Rights Official. The Reviewing Civil Rights Official's decision shall constitute the formal determination.

(6) If no request for review is submitted to the Reviewing Civil Rights Official under paragraph (b)(4)(iv) of this section, the Letter of Findings shall constitute the formal determination.

(c) *Voluntary compliance.* (1) It is the policy of the Department to encourage the informal resolution of matters. Additionally, it is the policy of the Department to ensure appropriate actions are taken to remedy noncompliance and prevent future noncompliance in an effort to avoid more severe corrective actions. In attempting informal resolution, the Responsible Civil Rights Official shall attempt to achieve a just resolution of the matter that will satisfactorily remedy any violations of §§ 5.150 through 5.180 or the program participant's obligation to affirmatively further fair housing. The Responsible Civil Rights Official may require in any

Voluntary Compliance Agreement that the program participant will take certain actions with respect to any aggrieved individual or class of individuals. The Responsible Civil Rights Official, in appropriate circumstances, may seek, in lieu of a Voluntary Compliance Agreement, assurances or special assurances of compliance. Any informal resolution shall include actions that will prevent the occurrence of such violations in the future. The Responsible Civil Rights Official may attempt to resolve a matter through informal means at any stage of processing. A matter may be resolved by informal means through entry into a Voluntary Compliance Agreement at any time. If a Letter of Findings of Noncompliance is issued, the Responsible Civil Rights Official or Reviewing Civil Rights Official shall attempt to resolve the matter by informal means, as applicable.

(2) In the event a program participant fails to comply with the terms of a Voluntary Compliance Agreement or assurance, the Responsible Civil Rights Official shall provide prompt notice to the program participant of its failure to comply and provide the program participant with a timeframe to cure the noncompliance. If the Responsible Civil Rights Official determines the program participant has failed to cure the noncompliance within the specified timeframe, any remedy provided by law may be used, including the procedures set forth in § 5.172.

(d) *Intimidatory or retaliatory acts prohibited.* No program participant or other person shall intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with HUD's administration of §§ 5.150 through 5.180 or the Fair Housing Act, or because he, she, or they have testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under §§ 5.150 through 5.180 or the Fair Housing Act.

§ 5.172 Procedures for effecting compliance.

(a) *General.* If the Responsible Civil Rights Official determines that compliance cannot be secured by voluntary means and ten days have elapsed since the determination of noncompliance was issued pursuant to § 5.170(b)(5) and (6), compliance with §§ 5.150 through 5.180 or the obligation to affirmatively further fair housing under the Fair Housing Act may be effected through such actions, which may include, but are not limited to:

(1) A referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States, or any assurance or other contractual undertaking;

(2) The initiation of an administrative proceeding by filing a Complaint and Notice of Proposed Adverse Action pursuant to 24 CFR 180.415 seeking suspension or termination of or refusal to grant or to continue to grant Federal financial assistance and any other appropriate relief necessary to remedy the non-compliance, including but not limited to conditioning the use of Federal financial assistance, and other declaratory, injunctive, or monetary relief;

(3) The initiation of debarment proceedings pursuant to 2 CFR part 2424; and

(4) Any applicable proceeding under State or local law.

(b) *Noncompliance with § 5.160(i), § 5.162(e), or § 5.170(c).* If a program participant fails or refuses to furnish an assurance required under § 5.160(i), § 5.162(e), or § 5.170(c), or otherwise fails or refuses to comply with the requirements imposed by §§ 5.150 through 5.180, Federal financial assistance may be refused under paragraph (c) of this section. HUD is not required to provide assistance during the pendency of the administrative proceeding under paragraph (a)(2) or (c) of this section.

(c) *Termination of or refusal to grant or to continue to grant Federal financial assistance.* Should HUD seek to terminate, refuse to grant or to not continue granting Federal financial assistance through an action initiated pursuant to paragraph (a)(2) of this section, no order suspending, terminating, or refusing to grant or to continue to grant Federal financial assistance shall become effective until:

(1) The Responsible Civil Rights Official has advised the program participant of its failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after an opportunity for a hearing, of a failure by the program participant to comply with the requirements of §§ 5.150 through 5.180 or its obligation to affirmatively further fair housing under the Fair Housing Act;

(3) The action has been approved by the Secretary; and

(4) Any action to suspend or terminate, or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or the particular program participant as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been found.

(d) *Notice to State or local government.* Whenever the Secretary determines that a State or local government that is a recipient of Federal financial assistance under title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301–5318) has failed to comply with a requirement of §§ 5.150 through 5.180 or its obligation to affirmatively further fair housing under the Fair Housing Act, the Secretary shall notify the Governor of the State or the chief executive officer of the unit of general local government of the noncompliance and shall request the Governor or the chief executive officer secure compliance. Such notification may be satisfied through the procedures set forth in § 5.170(c). The notice shall be given at least sixty days before:

(1) An order suspending, terminating, or refusing to grant or to continue to grant Federal financial assistance becomes effective under paragraph (a)(2) or (c) of this section; or

(2) Any other action to effect compliance is taken under paragraph (a) of this section.

§ 5.174 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 5.172 (a)(2) or (c), notice shall be given by certified mail, return receipt requested, to the affected program participant. This notice, pursuant to 24 CFR 180.415, shall advise the program participant of the action proposed to be taken, the specific provisions under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action. This notice shall accompany service of a complaint filed pursuant to 24 CFR part 180. The notice shall:

(1) Fix a date not less than twenty days after the date of the notice for the program participant to request the administrative law judge schedule a hearing; or

(2) Advise the program participant that the matter has been scheduled for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. A program participant may waive a hearing and submit written information and argument for the record. The failure of a program participant to request a hearing under this paragraph (a) or to appear at a hearing for which a date has been set is a waiver of the right to a hearing under § 5.172(a)(2) or (c) and consent to the

making of a decision on the basis of available information.

(b) *Hearing procedures.* Hearings shall be conducted in accordance with 24 CFR part 180.

§§ 5.175–5.180 [Reserved]

PART 91—CONSOLIDATED SUBMISSION FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

■ 3. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

■ 4. In § 91.2, paragraph (e) is added to read as follows:

§ 91.2 Applicability.

* * * * *

(e) All programs covered by the consolidated plan must comply with the requirements to affirmatively further fair housing, including those at §§ 5.150 through 5.180 of this title.

■ 5. In § 91.5, the introductory text is revised to read as follows:

§ 91.5 Definitions.

The terms *affirmatively furthering fair housing*, *elderly person*, *Equity Plan*, and *HUD* are defined in 24 CFR part 5.

* * * * *

■ 6. In § 91.100, paragraph (c) is revised and paragraph (e) is added to read as follows:

§ 91.100 Consultation; local governments.

* * * * *

(c) *Public housing agencies (PHAs).* (1) The jurisdiction shall consult with local PHAs operating in the jurisdiction regarding consideration of public housing needs, planned programs and activities, and the fair housing strategies and meaningful actions that will implement the fair housing goals from the Equity Plan consistent with § 5.156 of this title. This consultation will help provide a better basis for the certification by the authorized official that the PHA Plan is consistent with the consolidated plan and the local government's description of its strategy for affirmatively furthering fair housing and the manner in which it will address the needs of public housing and, where necessary, the manner in which it will provide financial or other assistance to a troubled PHA to improve the PHA's operations and remove the designation of troubled, as well as obtaining PHA input on addressing fair housing issues in the Public Housing and Housing Choice Voucher programs.

(2) This consultation will also help ensure that activities with regard to affirmatively furthering fair housing, local drug elimination, neighborhood improvement programs, and resident programs and services, those funded under a PHA's program and those funded under a program covered by the consolidated plan, are fully coordinated to implement the fair housing goals from the jurisdiction's and PHA's Equity Plan, achieve comprehensive community development goals, and affirmatively further fair housing. If a PHA is required to implement remedies under a Voluntary Compliance Agreement, the local jurisdiction should work with or consult with the PHA, as appropriate, to identify actions the jurisdiction may take, if any, to assist the PHA in implementing the required remedies.

* * * * *

(e) *Affirmatively furthering fair housing.* (1) For the Equity plan, the jurisdiction shall follow the community engagement requirements at § 5.158 of this title. For the consolidated plan, the jurisdiction shall consult with community-based and regionally-based organizations that represent protected class members and organizations that enforce fair housing laws, such as State or local fair housing enforcement agencies (including participants in the Fair Housing Assistance Program (FHAP)), fair housing organizations and other non-profit organizations that receive funding under the Fair Housing Initiatives Program (FHIP), and other public and private fair housing service agencies, to the extent that such entities operate within its jurisdiction. This consultation will help provide a better basis for the jurisdiction's Equity Plan, its certification to affirmatively furthering fair housing, and other portions of the consolidated plan concerning affirmatively further fair housing.

(2) This consultation must occur with any organizations that have relevant knowledge or data to inform the Equity Plan and that are sufficiently independent and representative to provide meaningful feedback to a jurisdiction on the Equity Plan and its implementation.

(3) Consultation must occur at various points in the fair housing planning process, meaning that, at a minimum, the jurisdiction will consult with the organizations described in this paragraph (e) in the development of both the Equity Plan and the consolidated plan. Consultation on the consolidated plan shall specifically seek input into how the fair housing goals identified in an accepted Equity Plan will be achieved through the priorities and objectives of the consolidated plan.

■ 7. In § 91.105, paragraphs (a), (b), (c), (e) heading, (e)(1)(i), (e)(2) through (4), (f), (g), (i), and (j) are revised to read as follows:

§ 91.105 Citizen participation plan; local governments.

(a) *Applicability and adoption of the citizen participation plan*—(1) *Citizen participation plan.* The jurisdiction is required to adopt a citizen participation plan that sets forth the jurisdiction's policies and procedures for citizen participation for purposes of the consolidated plan. The citizen participation plan may include the community engagement procedures for development of the Equity Plan, which shall be consistent with the requirements set forth at § 5.158 of this title.

(2) *Encouragement of citizen participation.* (i) The citizen participation plan must provide for and encourage citizens to participate in the development of the Equity Plan, any revisions to the Equity Plan, the consolidated plan, any substantial amendment to the consolidated plan, and the performance report. The requirements in this paragraph (a)(2)(i) are designed especially to encourage participation by low- and moderate-income persons, particularly those persons living in areas designated by the jurisdiction as a revitalization area or in a slum and blighted area and in areas where CDBG funds are proposed to be used, and by residents of predominantly low- and moderate-income neighborhoods, as defined by the jurisdiction, as well as members of protected class groups that have historically been denied equal opportunity, and underserved communities. A jurisdiction must take appropriate actions to encourage the participation of all its residents, including minorities and non-English speaking persons, as provided in paragraph (a)(4) of this section, as well as persons with disabilities, as provided in paragraph (a)(5) of this section.

(ii) The jurisdiction shall encourage the participation of local and regional institutions, Continuums of Care, and other organizations (including businesses, developers, non-profit organizations, philanthropic organizations, metropolitan planning organizations, and community-based and faith-based organizations) in the process of developing and implementing the Equity Plan and consolidated plan.

(iii) The jurisdiction shall encourage, in conjunction with consultation with

public housing agencies, the participation of residents of public and assisted housing developments (including any resident advisory boards, resident councils, and resident management corporations) in the process of developing and implementing the consolidated plan, along with other low-income residents of targeted revitalization areas in which the developments are located. The jurisdictions shall make an effort to provide information to the PHA about how the jurisdiction will affirmatively furthering fair housing through implementation of its fair housing goals from the Equity Plan, and other consolidated plan activities related to the PHA's developments and surrounding communities so that the PHA can make this information available at the annual public hearing(s) required for the PHA Plan.

(iv) The jurisdiction should explore alternative public involvement techniques and quantitative ways to measure efforts that encourage citizen participation in a shared vision for change in communities and neighborhoods, and the review of program performance; *e.g.,* use of focus groups, the internet, and social media. To the extent the jurisdiction includes the community engagement requirements for the Equity Plan in its citizen participation plan, the techniques described in this paragraph (a)(2)(iv) that are utilized for purposes of community engagement pursuant to § 5.158 of this title shall be consistent with the requirements of that section, including the nondiscrimination requirements described at § 5.158(a)(7) of this title.

(3) *Citizen comment on the citizen participation plan and amendments.* The jurisdiction must provide citizens with a reasonable opportunity to comment on the original citizen participation plan and on substantial amendments to the citizen participation plan, and must make the citizen participation plan public. The citizen participation plan must be in a format accessible to persons with disabilities and shall provide meaningful access to limited English proficient persons as more fully described in paragraphs (a)(4) and (5) of this section.

(4) *Language assistance for individuals with limited English proficiency.* The citizen participation plan shall describe the jurisdiction's procedures for assessing its language needs and identify any need for translation of notices and other vital documents. At a minimum, the citizen participation plan shall require that the jurisdiction take reasonable steps to provide language assistance to ensure meaningful access to participation by non-English-speaking residents of the community in the development of the consolidated plan.

(5) *Accessibility for persons with disabilities.* The citizen participation plan shall describe the jurisdiction's procedures for ensuring effective communication with persons with disabilities, consistent with the jurisdiction's obligations under section 504 of the Rehabilitation Act and HUD's implementing regulation at 24 CFR part 8 and title II of the Americans with Disabilities Act and the implementing regulation at 28 CFR part 35. At minimum, the citizen participation plan shall include the requirement that the jurisdiction furnish appropriate auxiliary aids and services where necessary to afford persons with disabilities an equal opportunity to participate in the development of the consolidated plan.

(b) *Development of the consolidated plan.* The citizen participation plan must include the following minimum requirements for the development of the consolidated plan:

(1)(i) The citizen participation plan must require that at or as soon as feasible after the start of the public participation process the jurisdiction will make the HUD-provided data and any other supplemental information the jurisdiction plans to incorporate into its Equity Plan or consolidated plan available to its residents, public agencies, and other interested parties.

(ii) The citizen participation plan must require that, before the jurisdiction adopts a consolidated plan, the jurisdiction will make available to residents, public agencies, and other interested parties information that includes the amount of assistance the jurisdiction expects to receive (including grant funds and program income) and the range of activities that may be undertaken, including the estimated amount that will benefit persons of low- and moderate-income. The citizen participation plan also must set forth the jurisdiction's plans to minimize displacement of persons and to assist any persons displaced, specifying the types and levels of assistance the jurisdiction will make available (or require others to make available) to persons displaced, even if the jurisdiction expects no displacement to occur.

(iii) The citizen participation plan must state when and how the jurisdiction will make this information available.

(2) The citizen participation plan must require the jurisdiction to publish the proposed consolidated plan in a manner that affords its residents, public agencies, and other interested parties a reasonable opportunity to examine its content and to submit comments. The citizen participation plan must set forth how the jurisdiction will publish the proposed consolidated plan and give reasonable opportunity to examine each document's content. The requirement for publishing may be met by publishing a summary of each document in one or more newspapers of general circulation, and by making copies of each document available on the internet, on the jurisdiction's official government website and pages on social media, and as well at libraries, government offices, and public places. The summary must describe the content and purpose of the consolidated plan and must include a list of the locations where copies of the entire proposed documents may be examined. In addition, the jurisdiction must provide a reasonable number of free copies of the plans to residents and groups that request them.

(3) The citizen participation plan must provide for at least one public hearing during the development of the consolidated plan. See paragraph (e) of this section for public hearing requirements, generally. See § 5.158(d) of this title for public hearing requirements for purposes of the Equity Plan.

(4) The citizen participation plan must provide a period, not less than 30 calendar days, to receive comments from residents of the community on the consolidated plan. This timing is distinct from the required community engagement for purposes of the Equity Plan set forth at § 5.158(a)(8)(i) of this title.

(5) The citizen participation plan shall require the jurisdiction to consider any comments or views of residents of the community received in writing, or orally at the public hearings, in preparing the consolidated plan. A summary of these comments or views, and a summary of any comments or views not accepted and the reasons why, shall be attached to the final consolidated plan. See § 5.154(h) of this title for the content requirements for purposes of the Equity Plan's community engagement process.

(c) *Consolidated plan amendments and Equity Plan revisions.* (1) The citizen participation plan must specify the criteria the jurisdiction will use for determining what changes in the jurisdiction's planned or actual activities constitute a substantial amendment to the consolidated plan. (See § 91.505.) The citizen participation plan must include, among the criteria

for a substantial amendment, changes in the use of CDBG funds from one eligible activity to another. If the jurisdiction includes the Equity Plan in its citizen participation plan, then the citizen participation plan shall specify the criteria for revisions of the Equity Plan, which shall, at minimum, be consistent with § 5.164 of this title.

(2) The citizen participation plan must provide community residents with reasonable notice and an opportunity to comment on substantial amendments to the consolidated plan. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given. The citizen participation plan must provide a period, of not less than 30 calendar days, to receive comments on the consolidated plan substantial amendment before the consolidated plan substantial amendment is implemented. If the citizen participation plan includes the Equity Plan, it shall be consistent with the requirements at § 5.164(a)(3) of this title.

(3) The citizen participation plan shall require the jurisdiction to consider any comments or views of residents of the community received in writing, or orally at public hearings, if any, in preparing the substantial amendment of the consolidated plan. A summary of these comments or views, and a summary of any comments or views not accepted and the reasons why, shall be attached to the substantial amendment of the consolidated plan. If the jurisdiction includes the Equity Plan in the citizen participation plan, it shall be consistent with the requirements set forth at §§ 5.154(h) and 5.158 of this title.

* * * * *

(e) *Public hearings.* (1)(i) *Consolidated plan.* The citizen participation plan must provide, for purposes of the consolidated plan, for at least two public hearings per year to obtain residents' views and to respond to proposals and questions, to be conducted at a minimum of two different stages of the program year. Together, the hearings must address housing and community development needs, development of proposed activities, proposed fair housing strategies and meaningful actions for affirmatively furthering fair housing based on the fair housing goals from the Equity Plan consistent with § 5.156 of this title, and a review of program performance. If the jurisdiction has included the community engagement procedures for development of the Equity Plan in its citizen participation plan, the requirements at § 5.158 of this title shall apply.

* * * * *

(2) The citizen participation plan must state how and when adequate advance notice will be given to citizens of each hearing on the consolidated plan, with sufficient information published about the subject of the hearing to permit informed comment. (Publishing small print notices in the newspaper a few days before the hearing does not constitute adequate notice. Although HUD is not specifying the length of notice required, it would consider two weeks adequate.)

(3) The citizen participation plan must provide that hearings be held at times and locations convenient to potential and actual beneficiaries, and accessible to persons with disabilities. The citizen participation plan must specify how it will meet the requirements in this paragraph (e)(3).

(4) The citizen participation plan must identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.

(f) *Meetings.* The citizen participation plan, for purposes of the consolidated plan, must provide residents of the community with reasonable and timely access to local meetings, consistent with accessibility and reasonable accommodation requirements, in accordance with section 504 of the Rehabilitation Act of 1973 and the regulations at 24 CFR part 8; and the Americans with Disabilities Act and the regulations at 28 CFR parts 35 and 36, as applicable. If the Equity Plan is included in the jurisdiction's citizen participation plan, the requirements for meetings set forth at § 5.158 of this title shall apply.

(g) *Availability to the public.* The citizen participation plan must provide that the consolidated plan as adopted, consolidated plan substantial amendments, and the performance report will be available to the public, including the availability of materials in a form accessible to persons with disabilities and shall provide meaningful access to limited English proficient persons as more fully described in paragraphs (a)(4) and (5) of this section. The citizen participation plan must state how these documents will be available to the public.

* * * * *

(i) *Technical assistance.* The citizen participation plan must provide for technical assistance to groups representative of persons of low- and moderate-income that request such assistance in commenting on the Equity Plan and in developing proposals for funding assistance under any of the programs covered by the consolidated plan, with the level and type of assistance determined by the jurisdiction. The assistance need not include the provision of funds to the groups.

(j) *Complaints.* The citizen participation plan shall describe the jurisdiction's appropriate and practicable procedures to handle complaints from its residents related to the consolidated plan, amendments, revisions, and the performance report. At a minimum, the citizen participation plan shall require that the jurisdiction must provide a timely, substantive written response to every written resident complaint, within an established period of time (within 15 working days, where practicable, if the jurisdiction is a CDBG grant recipient). This procedure is distinct from the processes that apply to the Equity Plan set forth at §§ 5.158(i) and 5.170 of this title.

* * * * *

■ 8. In § 91.110, paragraph (a) is revised to read as follows:

§ 91.110 Consultation; States.

(a) When preparing the consolidated plan, the State shall consult with other public and private agencies that provide assisted housing (including any State housing agency administering public housing), health services, and social and fair housing services (including those focusing on services to children, elderly persons, persons with disabilities, including persons with HIV/AIDS and their families, and homeless persons). For the Equity Plan, the jurisdiction shall follow the community engagement requirements at § 5.158 of this title.

(1) With respect to public housing or Housing Choice Voucher programs, the State shall consult with any housing agency administering public housing or the section 8 program on a Statewide basis as well as PHAs that certify consistency with the State's consolidated plan. State consultation with these entities may consider public housing needs, planned programs and activities, the Equity Plan strategies for affirmatively furthering fair housing and proposed actions to affirmatively further fair housing. This consultation helps provide a better basis for the certification by the authorized official that the PHA Plan is consistent with the consolidated plan and the State's description of its strategy to affirmatively further fair housing, and the manner in which the State will

address the needs of public housing and, where applicable, the manner in which the State may provide financial or other assistance to a troubled PHA to improve its operations and remove such designation, as well as in obtaining PHA input on addressing fair housing issues in public housing and the Housing Choice Voucher programs. This consultation also helps ensure that activities with regard to affirmatively furthering fair housing, local drug elimination, neighborhood improvement programs, and resident programs and services, funded under a PHA's program covered by the consolidated plan are fully coordinated to achieve comprehensive community development goals and affirmatively further fair housing. If a PHA is required to implement remedies under a Voluntary Compliance Agreement, the State should consult with the PHA and identify actions the State may take, if any, to assist the PHA in implementing the required remedies.

(2) The State shall consult with State-based and regionally-based organizations that represent protected class groups, including underserved communities, and organizations that enforce fair housing laws, such as State fair housing enforcement agencies (including participants in the Fair Housing Assistance Program (FHAP)), fair housing organizations and other non-profit organizations that receive funding under the Fair Housing Initiatives Program (FHIP), and other public and private fair housing service agencies, to the extent such entities operate within the State. This consultation will help provide a better basis for the State's Equity Plan, its certification that it is affirmatively furthering fair housing, and other portions of the consolidated plan concerning affirmatively furthering fair housing. This consultation should occur with organizations that have the capacity to engage with data informing the Equity Plan and be sufficiently independent and representative to provide meaningful feedback on the Equity Plan, the consolidated plan, and their implementation. Consultation must occur at various points in the fair housing planning process, meaning that, at a minimum, the jurisdiction will consult with the organizations described in this paragraph (a)(2) in the development of both the Equity Plan and the consolidated plan. Consultation on the consolidated plan shall specifically seek input into how the fair housing goals established in the Equity Plan will be incorporated into the priorities and objectives of the consolidated plan.

* * * * *

■ 9. In § 91.115:

■ a. Paragraphs (a)(1), (a)(2)(i) and (ii), and (a)(3) and (4) are revised;

■ b. Paragraph (a)(5) is added; and

■ c. The introductory text of paragraph (b), paragraphs (b)(1) and (2), the introductory text of paragraph (b)(3), and paragraphs (b)(4) and (5), (f), and (h) are revised.

The revisions and addition read as follows:

§ 91.115 Citizen participation plan; States.

(a) * * *

(1) *When citizen participation plan must be amended.* The State is required to adopt a citizen participation plan that sets forth the State's policies and procedures for citizen participation for purposes of the consolidated plan. The citizen participation plan may include the community engagement procedures for development of the Equity Plan, which shall be consistent with the requirements set forth at § 5.158 of this title.

(2) * * *

(i) The citizen participation plan must provide for and encourage citizens to participate in the development of the Equity Plan, any revisions to the Equity Plan, the consolidated plan, any substantial amendments to the consolidated plan, and the performance report. These requirements are designed especially to encourage participation by low- and moderate-income persons, particularly those living in slum and blighted areas and in areas where CDBG funds are proposed to be used and by residents of predominantly low- and moderate-income neighborhoods. A State must take appropriate actions to encourage the participation of all its residents, including minorities and non-English speaking persons, as provided in paragraph (a)(4) of this section, as well as persons with disabilities, as provided in paragraph (a)(5) of this section.

(ii) The State shall encourage the participation of Statewide and regional institutions, Continuums of Care, and other organizations (including businesses, developers, non-profit organizations, philanthropic organizations, metropolitan planning organizations, and community-based and faith-based organizations) that are involved with or affected by the programs or activities covered by the consolidated plan in the process of developing and implementing the Equity Plan and consolidated plan. Commencing with consolidated plans submitted in or after January 1, 2018, the State shall also encourage the participation of public and private organizations, including broadband internet service providers, organizations engaged in narrowing the digital divide, agencies whose primary responsibilities include the management of flood prone areas, public land or water resources, and emergency management agencies in the process of developing the consolidated plan. For purposes of the development of the Equity Plan, this obligation shall commence following [30 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE].

* * * * *

(3) *Citizen and local government comment on the citizen participation plan and amendments.* The State must provide citizens and units of general local government a reasonable opportunity to comment on the original citizen participation plan and on substantial amendments to the citizen participation plan, and must make the citizen participation plan public. The citizen participation plan must be in a format accessible to persons with disabilities and shall provide meaningful access to limited English proficient persons as more fully described in paragraphs (a)(4) and (5) of this section.

(4) *Language assistance for individuals with limited English proficiency.* The citizen participation plan shall describe the State's procedures for assessing its language needs and identify any need for translation of notices and other vital documents. At a minimum, the citizen participation plan shall require the State to make reasonable efforts to provide language assistance to ensure meaningful access to participation by non-English speaking persons in the development of the consolidated plan.

(5) *Accessibility for persons with disabilities.* The citizen participation plan shall describe the jurisdiction's procedures for ensuring effective communication with persons with disabilities, consistent with the jurisdiction's obligations under section 504 of the Rehabilitation Act and HUD's implementing regulation at 24 CFR part 8 and title II of the Americans with Disabilities Act and the implementing regulation at 28 CFR part 35. At minimum, the citizen participation plan shall include the requirement that the jurisdiction furnish appropriate auxiliary aids and services where necessary to afford persons with disabilities an equal opportunity to participate in the development of the consolidated plan.

(b) *Development of the Equity Plan and consolidated plan.* The citizen participation plan must include the following minimum requirements for the development of the Equity Plan and consolidated plan:

(1) The citizen participation plan must require that, before the State adopts a consolidated plan, the State will make available to its residents, public agencies, and other interested parties information that includes the amount of assistance the State expects to receive and the range of activities that may be undertaken, including the estimated amount that will benefit persons of low- and moderate-income and the plans to minimize displacement of persons and to assist any persons displaced. The State will also provide the amount of any assistance that will benefit protected class groups and underserved communities that have historically been denied access to opportunity. The citizen participation plan must state when and how the State will make this information available.

(2) The citizen participation plan must require the State to publish the proposed Equity Plan and the proposed consolidated plan in a manner that affords residents, units of general local governments, public agencies, and other interested parties a reasonable opportunity to examine the document's content and to submit comments. The citizen participation plan must set forth how the State will make publicly available the proposed Equity Plan and proposed consolidated plan and give reasonable opportunity to examine each document's content. To ensure that the Equity Plan, consolidated plan, and the PHA Plan are informed by meaningful community participation, program participants should employ communications means designed to reach the broadest audience. Such communications may be met by publishing a summary of each document in one or more newspapers of general circulation, and by making copies of each document available on the internet, on the grantee's official government website and its pages on social media, and as well at libraries, government offices, and public places. The summary must describe the content and purpose of the Equity Plan and consolidated plan, and must include a list of the locations where copies of the entire proposed document(s) may be examined. In addition, the State must provide a reasonable number of free copies of the plans to its residents and groups that request a copy of the plan.

(3) The citizen participation plan must provide for at least one public hearing on housing and community development needs before the proposed consolidated plan is published for comment. See § 5.158(d) of this title for public hearing requirements for purposes of the Equity Plan.

* * * * *

(4) The citizen participation plan must, for purposes of the consolidated plan, provide a period of not less than 30 calendar days, to receive comments from residents and units of general local government on the consolidated plan. This timing is distinct from the required community engagement for purposes of the Equity Plan set forth at § 5.158(a)(8)(i) of this title.

(5) The citizen participation plan shall require the State to consider any comments or views of its residents and units of general local government received in writing, or orally at the public hearings, in preparing the final Equity Plan or consolidated plan. A summary of these comments or views, and a summary of any comments or views not accepted and the reasons therefore, shall be attached to the final consolidated plan (as applicable). See § 5.154(h) of this title for the content requirements for purposes of the Equity Plan's community engagement process.

* * * * *

(f) *Availability to the public.* The citizen participation plan must provide that the consolidated plan as adopted, consolidated plan substantial amendments and the performance report will be available to the public, including the availability of materials in a form accessible to persons with disabilities and shall provide meaningful access to limited English proficient persons as more fully described in paragraphs (a)(4) and (5) of this section. The citizen participation plan must state how these documents will be available to the public.

* * * * *

(h) *Complaints.* The citizen participation plan shall describe the State's appropriate and practicable procedures to handle complaints from its residents related to the consolidated plan, consolidated plan amendments, and the performance report. At a minimum, the citizen participation plan shall require that the State must provide a timely, substantive written response to every written resident complaint, within an established period of time (within 15 working days, where practicable, if the State is a CDBG grant recipient). This procedure is distinct from the processes that apply to the Equity Plan set forth at §§ 5.158(i) and 5.170 of this title.

* * * * *

■ 10. In § 91.215:

■ a. Paragraph (a)(4) is amended by removing the period at the end of the paragraph and adding ''; and'' in its place; and

■ b. Paragraph (a)(5) is added.

The addition reads as follows:

§ 91.215 Strategic plan.

(a) * * *

(5)(i) Describe how the priorities and specific objectives of the jurisdiction under paragraph (a)(4) of this section will affirmatively further fair housing by setting forth fair housing strategies and meaningful actions consistent with the fair housing goals and other elements of the Equity Plan conducted in accordance with §§ 5.150 through 5.180 of this title.

(ii) For any fair housing goals from the Equity Plan not addressed by the priorities and objectives under paragraph (a)(4) of this section, identify how these goals have been incorporated into the plan consistent with the requirements of § 5.156.

* * * * *

■ 11. In § 91.220, paragraphs (k), (l)(1)(iv), and (l)(3) are revised to read as follows:

§ 91.220 Action plan.

* * * * *

(k) *Affirmatively furthering fair housing and other actions*—(1) *Affirmatively furthering fair housing.* Actions the jurisdiction plans to take during the next year to implement the fair housing goals established in the Equity Plan developed pursuant to §§ 5.150 through 5.180 of this title or other actions to address fair housing issues consistent with the jurisdiction's obligation to affirmatively further fair housing.

(2) *Other actions.* Actions it plans to take during the next year to address obstacles to meeting underserved needs, foster and maintain affordable housing, evaluate and reduce lead-based paint hazards, reduce the number of poverty-level families, develop institutional structure, and enhance coordination between public and private housing and social service agencies (see § 91.215(a), (b), (i), (j), (k), and (l)).

(l) * * *

(1) * * *

(iv) The plan shall identify the estimated amount of CDBG funds that will be used for activities that benefit persons of low- and moderate-income. The information about activities shall be in sufficient detail, including location, to allow residents to determine the degree to which they are affected. The information about activities shall also include whether the activities are for purposes of implementing any fair

housing goals from the Equity Plan incorporated pursuant to § 5.156 of this title.

* * * * *

(3) *HOPWA.* For HOPWA funds, the jurisdiction must specify one-year goals for the number of households to be provided housing through the use of HOPWA activities for: short-term rent, mortgage, and utility assistance payments to prevent homelessness of the individual or family; tenant-based rental assistance; and units provided in housing facilities that are being developed, leased, or operated with HOPWA funds and shall identify the method of selecting project sponsors (including providing full access to grassroots faith-based and other community organizations). The information about activities shall include whether the activities are for purposes of implementing the fair housing goals, from the Equity Plan.

* * * * *

■ 12. In § 91.225, paragraph (a)(1) is revised to read as follows:

§ 91.225 Certifications.

(a) * * *

(1) *Affirmatively furthering fair housing.* Each jurisdiction is required to submit a certification that they will affirmatively further fair housing, which includes engaging in fair housing planning and taking meaningful actions, in accordance with the requirements of §§ 5.150 through 5.180 of this title, and that it will take no action that is materially inconsistent with the duty to affirmatively further fair housing throughout the period for which Federal financial assistance is extended.

* * * * *

■ 13. Section 91.230 is revised to read as follows:

§ 91.230 Monitoring.

The plan must describe the standards and procedures that the jurisdiction will use to monitor activities carried out in furtherance of the plan, including strategies and actions that address the fair housing issues and goals identified in the Equity Plan and that the jurisdiction will use to ensure long-term compliance with requirements of the programs involved, including civil rights related program requirements, minority business outreach, and the comprehensive planning requirements.

■ 14. In § 91.235, paragraphs (c)(1) and (4) are revised to read as follows:

§ 91.235 Special case; abbreviated consolidated plan.

* * * * *

(c) * * *

(1) *Assessment of needs, resources, and planned activities.* An abbreviated plan must contain sufficient information about needs, resources, and planned activities to address the needs to cover the type and amount of assistance anticipated to be funded by HUD. The jurisdiction must describe how the jurisdiction will affirmatively further fair housing by implementing the fair housing goals established in the Equity Plan developed in accordance with §§ 5.150 through 5.180 of this title.

* * * * *

(4) *Submissions, certifications, amendments, and performance reports.* An insular area grantee that submits an abbreviated consolidated plan under this section must comply with the submission, certification, amendment, and performance report requirements of § 570.440 of this title. This includes the certification that the grantee will affirmatively further fair housing, which means that it will take meaningful actions to implement the goals identified in the Equity Plan in accordance with the requirements of §§ 5.150 through 5.180 of this title and that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

* * * * *

■ 15. In § 91.305, paragraph (b)(1)(ii) is revised to read as follows:

§ 91.305 Housing and homeless needs assessment.

* * * * *

(b) * * *

(1) * * *

(ii) The description of housing needs shall include a concise summary of the cost burden and severe cost burden, overcrowding (especially for large families), and substandard housing conditions being experienced by extremely low-income, low-income, moderate-income, and middle-income renters and owners compared to the State as a whole. (The State must define in its consolidated plan the terms ''standard condition'' and ''substandard condition but suitable for rehabilitation.'') The State may utilize the analysis contained in the Equity Plan relating to affordable housing opportunities pursuant to §§ 5.152 and 5.154 of this title to satisfy the requirement in this paragraph (b)(1)(ii).

* * * * *

■ 16. In § 91.315, paragraph (a)(5) is added to read as follows:

§ 91.315 Strategic plan.

(a) * * *

(5)(i) Describe how the priorities and specific objectives of the State under paragraph (a)(4) of this section affirmatively further fair housing by setting forth fair housing strategies and meaningful actions consistent with the fair housing goals and other elements of the Equity Plan conducted in accordance with §§ 5.150 through 5.180 of this title.

(ii) For any fair housing goals from the Equity Plan not addressed by the priorities and objectives under paragraph (a)(4) of this section, identify how these goals have been incorporated into the plan consistent with the requirements of §§ 5.150 through 5.180.

* * * * *

■ 17. In § 91.320, paragraphs (j), (k)(3)(iv), and (k)(4), the introductory text of paragraph (k)(5), and paragraph (k)(5)(ii) are revised to read as follows:

§ 91.320 Action plan.

* * * * *

(j) *Affirmatively furthering fair housing and other actions*—(1) *Affirmatively furthering fair housing.* Actions it plans to take during the next year that implement fair housing goals established in the Equity Plan.

(2) *Other actions.* Actions it plans to take during the next year to implement its strategic plan and address obstacles to meeting underserved needs, foster and maintain affordable housing (including allocation plans and policies governing the use of Low-Income Housing Credits under 26 U.S.C. 42, which are more commonly referred to as Low-Income Housing Tax Credits), evaluate and reduce lead-based paint hazards, reduce the number of poverty-level families, develop institutional structure, enhance coordination between public and private housing and social service agencies, address the needs of public housing (including providing financial or other assistance to troubled PHAs), and encourage public housing residents to become more involved in management and participate in homeownership.

(k) * * *

(3) * * *

(iv) The State must describe the performance standards for evaluating ESG activities, which includes implementation of the fair housing goals from the Equity Plan.

* * * * *

(4) *HOPWA.* For HOPWA funds, the State must specify one-year goals for the number of households to be provided housing through the use of HOPWA activities for short-term rent; mortgage and utility assistance payments to prevent homelessness of the individual or family; tenant-based rental assistance; and units provided in housing facilities

that are being developed, leased or operated with HOPWA funds, and shall identify the method of selecting project sponsors (including providing full access to grassroots faith-based and other community-based organizations). The information about activities shall include whether the activities are for purposes of implementing the fair housing goals from the Equity Plan.

(5) *Housing Trust Fund.* The action plan must include the HTF allocation plan that describes the distribution of the HTF funds, and establishes the application requirements and the criteria for selection of applications submitted by eligible recipients that meet the State's priority housing needs. The plan must also establish the State's maximum per-unit development subsidy limit for housing assisted with HTF funds. If the HTF funds will be used for first-time homebuyers, it must state the guidelines for resale and recapture as required in 24 CFR 93.304. The plan must reflect the State's decision to distribute HTF funds through grants to subgrantees and/or to select applications submitted by eligible recipients. If the State is selecting applications submitted by eligible recipients, the plan must include the following:

* * * * *

(ii) The plan must include the requirement that the application contain a description of the eligible activities to be conducted with the HTF funds (as provided in 24 CFR 93.200) and contain a certification by each eligible recipient that housing units assisted with the HTF will comply with HTF requirements. The plan must also describe eligibility requirements for recipients (as defined in 24 CFR 93.2). The information about activities shall include whether the activities are for purposes of implementing the fair housing goals from the Equity Plan.

* * * * *

■ 18. In § 91.325, paragraph (a)(1) is revised as follows:

§ 91.325 Certifications.

(a) * * *

(1) *Affirmatively furthering fair housing.* Each State is required to submit a certification that it will affirmatively further fair housing, which includes engaging in fair housing planning and taking meaningful actions, in accordance with the requirements of §§ 5.150 through 5.180, and that it will take no action that is materially inconsistent with the duty to affirmatively further fair housing throughout the period for which Federal financial assistance is extended.

* * * * *

■ 19. Section 91.330 is revised to read as follows:

§ 91.330 Monitoring.

The consolidated plan must describe the standards and procedures that the State will use to monitor activities carried out in furtherance of the plan including strategies and actions that address the fair housing issues and goals identified in the Equity Plan and that the State will use to ensure long-term compliance with the programs involved including civil rights related program requirements, minority business outreach, and the comprehensive planning requirements.

■ 20. Section 91.415 is revised to read as follows:

§ 91.415 Strategic plan.

Strategies and priority needs must be described in the consolidated plan, in accordance with the provisions of § 91.215, for the entire consortium. The consortium is not required to submit a nonhousing Community Development Plan; however, if the consortium includes CDBG entitlement communities, the consolidated plan must include the nonhousing Community Development Plans of the CDBG entitlement community members of the consortium. The consortium must set forth its priorities for allocating housing resources (including CDBG and ESG, where applicable) geographically within the consortium, describing how the consolidated plan will address the needs identified (in accordance with § 91.405), setting forth fair housing strategies and meaningful actions to implement the fair housing goals of the Equity Plan developed pursuant to §§ 5.150 through 5.180 of this title, describing the reasons for the consortium's allocation priorities, and identifying any obstacles there are to addressing underserved needs.

■ 21. In § 91.420, paragraph (b) is revised to read as follows:

§ 91.420 Action plan.

* * * * *

(b) *Description of resources and activities.* The action plan must describe the resources to be used and activities to be undertaken to pursue its strategic plan, including actions the consortium intends to undertake in the next year to address fair housing issues identified in the Equity Plan. The consolidated plan must provide this description for all resources and activities within the entire consortium as a whole, as well as a description for each individual community that is a member of the consortium.

* * * * *

■ 22. In § 91.425, paragraph (a)(1)(i) is revised to read as follows:

§ 91.425 Certifications.

(a) * * *

(1) * * *

(i) *Affirmatively furthering fair housing.* Each consortium must certify that it will affirmatively further fair housing, which includes engaging in fair housing planning and taking meaningful actions, in accordance with the requirements of §§ 5.150 through 5.180 of this title, and that it will take no action that is materially inconsistent with the duty to affirmatively further fair housing throughout the period for which Federal financial assistance is extended.

* * * * *

■ 23. Section 91.430 is revised to read as follows:

§ 91.430 Monitoring.

The consolidated plan must describe the standards and procedures that the consortium will use to monitor activities carried out in furtherance of the plan, including strategies and actions that address the fair housing issues and goals identified in the Equity Plan and that the consortium will use to ensure long-term compliance with requirements of the programs involved, including civil rights related program requirements, minority business outreach, and the comprehensive planning requirements.

■ 24. In § 91.500, the introductory text in paragraph (b) is revised to read as follows:

§ 91.500 HUD approval action.

* * * * *

(b) *Standard of review.* The standards in this section apply to the consolidated plan. The standards for HUD's review of the Equity Plan at § 5.162 of this title are distinct from the actions described in this section. HUD may disapprove a consolidated plan or a portion of a consolidated plan if it is inconsistent with the purposes of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12703), if it is substantially incomplete, or, in the case of certifications applicable to the CDBG program under § 91.225(a) and (b) or § 91.325(a) and (b), if it is not satisfactory to the Secretary in accordance with § 570.304, § 570.429(g), or § 570.485(c) of this title, as applicable. The following are examples of consolidated plans that are substantially incomplete:

* * * * *

■ 25. In § 91.505:
■ a. Remove the word ''or'' at the end of paragraph (a)(2);
■ b. Remove the period at the end of paragraph (a)(3) and add ''; or'' in its place; and
■ c. Add paragraph (a)(4).
The addition reads as follows:

§ 91.505 Amendments to the consolidated plan.

(a) * * *

(4) To incorporate fair housing goals when an Equity Plan is accepted or revised after a consolidated plan is in effect.

* * * * *

PART 92—HOME INVESTMENT PARTNERSHIP PROGRAM

■ 26. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 12 U.S.C. 1701x and 4568.

■ 27. In § 92.2, the introductory text is revised to read as follows:

§ 92.2 Definitions.

The terms *1937 Act, affirmatively furthering fair housing, ALJ, Equity Plan, Fair Housing Act, HUD, Indian Housing Authority (IHA), public housing, public housing agency (PHA),* and *Secretary* are defined in 24 CFR part 5.

* * * * *

■ 28. Section 92.5 is added to read as follows:

§ 92.5 Affirmatively furthering fair housing.

All participating jurisdictions must comply with the requirements to affirmatively further fair housing, including those at §§ 5.150 through 5.180 of this title.

■ 29. In § 92.61, paragraph (c)(5) is revised to read as follows:

§ 92.61 Program description.

* * * * *

(c) * * *

(5) A certification that the insular area will use HOME funds in compliance with all requirements of this part, including the insular area's obligation to affirmatively further fair housing and conduct its federally funded programs and activities in a manner that is consistent with Federal fair housing and civil rights requirements;

* * * * *

■ 30. Section 92.104 is revised to read as follows:

§ 92.104 Submission of a consolidated plan.

A jurisdiction that has not submitted a consolidated plan to HUD must submit to HUD, not later than 90 calendar days after providing notification under § 92.103, a consolidated plan in accordance with 24 CFR part 91 and submit an Equity Plan in accordance with §§ 5.150 through 5.180 of this title.

■ 31. In § 92.207, paragraph (d) is revised to read as follows:

§ 92.207 Eligible administrative and planning costs.

* * * * *

(d) *Fair housing, civil rights, and equal opportunity.* Activities to affirmatively further fair housing in accordance with the participating jurisdiction's certification under § 5.166 and part 91 of this title.

* * * * *

■ 32. In § 92.350, paragraph (a) is revised to read as follows:

§ 92.350 Other Federal requirements and nondiscrimination.

(a) The Federal requirements set forth in 24 CFR part 5, subpart A, are applicable to participants in the HOME program. The requirements of this subpart include: nondiscrimination and equal opportunity; affirmatively furthering fair housing; disclosure requirements; debarred, suspended or ineligible contractors; drug-free work; and housing counseling.

* * * * *

■ 33. In § 92.351, paragraph (a)(1) is revised to read as follows:

§ 92.351 Affirmative marketing; minority outreach program.

(a) * * *

(1) Each participating jurisdiction must adopt and follow affirmative marketing procedures and requirements for rental and homebuyer projects containing five or more HOME-assisted housing units. Affirmative marketing requirements and procedures also apply to all HOME-funded programs, including, but not limited to, tenant-based rental assistance and downpayment assistance programs. Affirmative marketing steps consist of actions to provide effective information and otherwise attract and provide access to the available housing throughout the housing market area regardless of race, color, national origin, sex (including sexual orientation, gender identity, and nonconformance with gender stereotypes), religion, familial status, or disability. If participating jurisdiction's written agreement with the project owner permits the rental housing project to limit tenant eligibility or to have a tenant preference in accordance with § 92.253(d)(3), the participating jurisdiction must have affirmative marketing procedures and requirements that apply in the context of the limited/preferred tenant eligibility for the project.

* * * * *

■ 34. In § 92.508, paragraph (a)(7)(i)(B) is revised to read as follows:

§ 92.508 Recordkeeping.

(a) * * *

(7) * * *

(i) * * *

(B) Documentation of the actions the participating jurisdiction has taken to affirmatively further fair housing, including documentation related to the participating jurisdiction's Equity Plan as described at § 5.168 of this title.

* * * * *

PART 93—HOUSING TRUST FUND

■ 35. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 12 U.S.C. 4568.

■ 36. In § 93.2, introductory text is added to read as follows:

§ 93.2 Definitions.

The terms *affirmatively furthering fair housing* and *Equity Plan* are defined in 24 CFR part 5.

* * * * *

■ 37. Section 93.4 is added to read as follows:

§ 93.4 Affirmatively furthering fair housing.

All recipients of HTF funds must comply with the requirements to affirmatively further fair housing, including those at §§ 5.150 through 5.180 of this title.

■ 38. In § 93.100, paragraph (b) is revised to read as follows:

§ 93.100 Participation and submission requirements.

* * * * *

(b) *Submission requirement.* To receive its HTF grant, the grantee must submit a consolidated plan in accordance with 24 CFR part 91 and an Equity Plan pursuant to §§ 5.150 through 5.180 of this title.

■ 39. In § 93.200, paragraph (a)(1) is revised to read as follows:

§ 93.200 Eligible activities: General.

(a)(1) HTF funds may be used for the production, preservation, and rehabilitation of affordable rental housing and affordable housing for first-time homebuyers through the acquisition (including assistance to homebuyers), new construction, reconstruction, or rehabilitation of nonluxury housing with suitable amenities, including real property

acquisition, site improvements, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations; for operating costs of HTF-assisted rental housing; and for reasonable administrative and planning costs. Not more than one third of each annual grant may be used for operating cost assistance and operating cost assistance reserves. Operating cost assistance and operating cost assistance reserves may be provided only to rental housing acquired, rehabilitated, reconstructed, or newly constructed with HTF funds. Not more than 10 percent of the annual grant shall be used for housing for homeownership. HTF-assisted housing must be permanent housing. The specific eligible costs for these activities are found in §§ 93.201 and 93.202. The activities and costs are eligible only if the housing meets the property standards in § 93.301, as applicable, upon project completion. HTF Funds may be used for any activity otherwise eligible under this part that implements goals from an Equity Plan pursuant to §§ 5.150 through 5.180 of this part.

* * * * *

■ 40. In § 93.202, paragraph (e) is revised to read as follows:

§ 93.202 Eligible administrative and planning costs.

* * * * *

(e) *Fair housing, civil rights, and equal opportunity.* Activities to affirmatively further fair housing in accordance with the grantee's certification under § 5.166 and part 91 of this title.

* * * * *

■ 41. In § 93.350, the section heading and paragraphs (a) and (b)(1) are revised to read as follows:

§ 93.350 Other Federal requirements and nondiscrimination; affirmative marketing.

(a) *General.* The Federal requirements set forth in 24 CFR part 5, subpart A, are applicable to participants in the HTF program. The requirements of this subpart include: nondiscrimination and equal opportunity, affirmatively furthering fair housing; disclosure requirements; debarred, suspended, or ineligible contractors; drug-free work; and housing counseling.

(b) * * *

(1) Each grantee must adopt and follow affirmative marketing procedures and requirements for rental projects containing five or more HTF-assisted housing units and for homeownership assistance programs. Affirmative marketing steps consist of actions to provide effective information and otherwise attract and provide access to the available housing throughout the housing market area regardless of race, color, national origin, sex (including sexual orientation, gender identity, and nonconformance with gender stereotypes), religion, familial status, or disability. If a grantee's written agreement with the project owner permits the rental housing project to limit tenant eligibility or to have a tenant preference in accordance with § 93.303(d)(3), the grantee must have affirmative marketing procedures and requirements that apply in the context of the limited/preferred tenant eligibility for the project.

* * * * *

■ 42. In § 93.407, paragraph (a)(1)(vii) is added to read as follows:

§ 93.407 Recordkeeping.

(a) * * *

(1) * * *

(vii) Records documenting the actions the grantee has taken to affirmatively further fair housing, including documentation relating to the grantee's Equity plan described at § 5.168 of this title.

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 43. The authority citation for part 570 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701x–1; 42 U.S.C. 3535(d) and 5301–5320.

■ 44. In § 570.3, the introductory text is revised to read as follows:

§ 570.3 Definitions.

The terms *affirmatively furthering fair housing, Equity Plan, HUD,* and *Secretary* are defined in 24 CFR part 5. All of the following definitions in this section that rely on data from the United States Bureau of the Census shall rely upon the data available from the latest decennial census or the American Community Survey.

* * * * *

■ 45. Section 570.6 is added to read as follows:

§ 570.6 Affirmatively furthering fair housing.

All programs covered by this part must comply with the requirements to affirmatively further fair housing, including those at §§ 5.150 through 5.180 of this title.

■ 46. In § 570.205:

■ a. Remove the word ''and'' at the end of paragraph (a)(4)(vi);

■ b. Remove the period at the end of paragraph (a)(4)(vii) and add ''; and'' in its place;

■ c. Add paragraph (a)(4)(viii);

■ d. Revise paragraph (a)(6); and

■ e. Add reserved paragraph (b).

The additions and revision read as follows:

§ 570.205 Eligible planning, urban environmental design and policy-planning-management-capacity building activities.

(a) * * *

(4) * * *

(viii) The Equity Plan.

* * * * *

(6) Policy—planning—management—capacity building activities which will enable the recipient to:

(i) Determine its needs;

(ii) Set long-term goals and short-term objectives, including those related to urban environmental design and implementation of fair housing goals from the Equity Plan;

(iii) Devise programs and activities to meet these goals and objectives, including implementation of fair housing goals from the Equity plan;

(iv) Evaluate the progress of such programs and activities in accomplishing these goals and objectives; and

(v) Carry out management, coordination and monitoring of activities necessary for effective planning implementation, including with respect to any fair housing goals from the Equity Plan, but excluding the costs necessary to implement such plans.

(b) [Reserved]

■ 47. In § 570.206, paragraph (c) is revised to read:

§ 570.206 Program administrative costs.

* * * * *

(c) *Fair housing activities.* Provision of fair housing services designed to affirmatively further the purposes of the Fair Housing Act (42 U.S.C. 3601–20) by making all persons, without regard to race, color, religion, sex (including gender identity, sexual orientation, and nonconformance with gender stereotypes), national origin, familial status, or disability, aware of the range of housing opportunities available to them; other fair housing enforcement, education, and outreach activities; and other activities designed to further fair housing.

* * * * *

■ 48. In § 570.441, paragraphs (b)(1)(ii) and (d) are revised to read as follows:

§ 570.441 Citizen participation—insular areas.

* * * * *

(b) * * *

(1) * * *

(ii) The range of activities that may be undertaken with those funds which may include Equity Plan fair housing goals incorporated pursuant to § 5.156 of this title;

* * * * *

(d) *Preparation of the final statement.* An insular area jurisdiction must prepare a final statement. In the preparation of the final statement, the jurisdiction shall consider comments and views received relating to the proposed document and may, if appropriate, modify the final document. To the extent comments or views were received that relate to the incorporation of the Equity Plan pursuant to § 5.156 of this title, the jurisdiction shall specifically note how the document was modified in response, and if not, the reasons why. The final statement shall be made available to the public. The final statement shall include the community development objectives, projected use of funds, and the community development activities.

* * * * *

■ 49. In § 570.487, paragraph (b) is revised to read as follows:

§ 570.487 Other applicable laws and related program requirements.

* * * * *

(b) *Affirmatively furthering fair housing.* The requirements set forth at 24 CFR part 5, subpart A, are applicable to CDBG grantees. Each jurisdiction is required to submit a certification that they will affirmatively further fair housing which means engaging in fair housing planning and taking meaningful actions, in accordance with the requirements of §§ 5.150 through and 5.180 of this title, and that it will take no action that is materially inconsistent with the duty to affirmatively fair housing throughout the period for which Federal financial assistance is extended. Each unit of general local government is required to certify that it will affirmatively further fair housing, in accordance with the requirements of §§ 5.150 through and 5.180 of this title, and that it will take no action that is materially inconsistent with the duty to affirmatively further fair housing throughout the period for which Federal financial assistance is extended.

* * * * *

■ 50. In § 570.490, paragraphs (a)(1) and (b) are revised to read as follows:

§ 570.490 Recordkeeping requirements.

(a) * * *

(1) The State shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the State's administration of CDBG funds under § 570.493. The content of records maintained by the State shall be as jointly agreed upon by HUD and the States and sufficient to enable HUD to make the determinations described at § 570.493. For fair housing and equal opportunity purposes, whereas such data is already being collected and where applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program. Such records shall include documentation relating to the State's Equity Plan as described at § 5.168 of this title. The records shall also permit audit of the States in accordance with 2 CFR part 200.

* * * * *

(b) *Unit of general local government's record.* The State shall establish recordkeeping requirements for units of general local government receiving CDBG funds that are sufficient to facilitate reviews and audits of such units of general local government under §§ 570.492 and 570.493. For fair housing and equal opportunity purposes, whereas such data is already being collected and where applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program. Such records shall include documentation related to the State's Equity Plan as described at § 5.168 of this title.

* * * * *

■ 51. In § 570.506, paragraph (g)(1) is revised to read as follows:

§ 570.506 Records to be maintained.

* * * * *

(g) * * *

(1) Documentation of the actions the recipient has taken to affirmatively further fair housing, including documentation related to the recipient's Equity Plan described at § 5.168 of this title.

* * * * *

■ 52. In § 570.601, the section heading and paragraph (a)(2) is revised to read as follows:

§ 570.601 Civil rights; affirmatively furthering fair housing; equal opportunity requirements.

(a) * * *

(2) Public Law 90–284, which is the Fair Housing Act (42 U.S.C. 3601–3620). In accordance with the Fair Housing Act, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act. The affirmatively furthering fair housing requirements set forth in 24 CFR part 5, subpart A, are applicable to CDBG grantees. Furthermore, in accordance with section 104(b)(2) of the Act, for each community receiving a grant under subpart D of this part, the certification, that the grantee will affirmatively further fair housing, shall specifically require the grantee to take meaningful actions to further the fair housing goals established in the Equity Plan developed pursuant to §§ 5.150 through 5.180 of this title, and that it will take no action that is materially inconsistent with the duty to affirmatively further fair housing.

* * * * *

■ 53. In § 570.904, paragraph (c)(2) is revised to read as follows:

§ 570.904 Equal opportunity and fair housing review criteria.

* * * * *

(c) * * *

(2) *Affirmatively furthering fair housing.* HUD will review a recipient's performance to determine if it has administered all programs and activities related to housing and urban development in accordance with § 570.601(a)(2) for purposes of administration of CDBG funds, which sets forth the grantee's responsibility to affirmatively further fair housing. The review undertaken pursuant to this section is distinct from the procedures set forth at 24 CFR part 1, 3, 5, 6, 8, or 146 or 28 CFR part 35 conducted by the Responsible Civil Rights Official (as defined in 24 CFR part 5), which are reviews for purposes of determining a grantee's compliance with Federal fair housing and civil rights requirements, including the grantee's obligation to affirmatively further fair housing.

* * * * *

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

■ 54. The authority citation for part 574 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x-1; 42 U.S.C. 3535(d) and 5301–5320.

■ 55. In § 574.3, the introductory text is revised to read as follows:

§ 574.3 Definitions.

The terms *affirmatively furthering fair housing, grantee,* and *Secretary* are defined in 24 CFR part 5.

* * * * *

■ 56. Section 574.4 is added to read as follows:

§ 574.4 Affirmatively furthering fair housing.

All grantees must comply with the requirements to affirmatively further fair housing, including those at §§ 5.150 through 5.180 of this title.

■ 57. In § 574.530, paragraph (b) is revised to read as follows:

§ 574.530 Recordkeeping.

* * * * *

(b) Documentation of the actions the grantee has taken to affirmatively further fair housing pursuant to §§ 5.150 through 5.180 of this title.

* * * * *

PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAM

■ 58. The authority citation for part 576 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x-1; 42 U.S.C. 11371 *et seq.,* 42 U.S.C. 3535(d).

■ 59. In § 576.2, introductory text is added to read as follows:

§ 576.2 Definitions.

The term *affirmatively furthering fair housing* is defined in 24 CFR part 5.

* * * * *

■ 60. Section 576.4 is added to read as follows:

§ 576.4 Affirmatively furthering fair housing.

All recipients of ESG funds must comply with the requirements to affirmatively further fair housing, including those at §§ 5.150 through 5.180 of this title.

■ 61. In § 576.500, paragraph (s)(1)(ii) is revised to read as follows:

§ 576.500 Recordkeeping and reporting requirements.

* * * * *

(s) * * *

(1) * * *

(ii) Documentation of the actions that the recipient has taken to affirmatively further fair housing pursuant to §§ 5.150 through 5.180 of this title.

* * * * *

PART 903—PUBLIC HOUSING AGENCY PLANS

■ 62. The authority citation for part 903 continues to read as follows:

Authority: 42 U.S.C. 1437c; 42 U.S.C. 1437c-1; Pub. L. 110–289; 42 U.S.C. 3535d.

■ 63. Section 903.1 is revised to read as follows:

§ 903.1 What is the purpose of this subpart?

The purpose of this subpart is to specify the process which a public housing agency (PHA), as part of its annual planning process and development of an admissions policy, must follow in order to develop and apply a policy that provides for deconcentration of poverty and income mixing in certain public housing developments. This subpart also includes requirements for the PHA's obligation to affirmatively further fair housing and comply with the requirements set forth at §§ 5.150 through 5.180 of this title.

■ 64. In § 903.4, paragraph (a)(3) is added to read as follows:

§ 903.4 What are the public housing agency plans?

(a) * * *

(3) The plans described in this section include the incorporation, pursuant to § 5.156 of this title, of the fair housing goals established in the PHA's Equity Plan.

* * * * *

■ 65. In § 903.6, paragraph (a)(4) is added and paragraph (b)(2) is revised to read as follows:

§ 903.6 What information must a PHA provide in the 5-Year Plan?

(a) * * *

(4) The PHA's fair housing strategies and meaningful actions it intends to undertake in order to implement the fair housing goals incorporated from the PHA's Equity Plan pursuant to § 5.156 of this title.

(b) * * *

(2) The progress the PHA has made in meeting the goals and objectives described in the PHA's previous 5-Year Plan. For purposes of the requirement in this paragraph (b)(2) as it relates to the PHA's fair housing goals, the PHA may rely on the progress evaluations required for purposes of the Equity Plan, conducted pursuant to §§ 5.152, 5.154(i) and (j), 5.156(d), and 5.160(f) and (i) of this title.

■ 66. In § 903.7, the introductory text and paragraphs (a)(1)(iii), (b) introductory text, and (o) are revised to read as follows:

§ 903.7 What information must a PHA provide in the Annual Plan?

With the exception of the first Annual Plan submitted by a PHA, the Annual Plan must include the information provided in this section. HUD will advise PHAs by separate notice, sufficiently in advance of the first Annual Plan due date, of the information described in this section that must be part of the first Annual Plan submission, and any additional instructions or directions that may be necessary to prepare and submit the first Annual Plan. The information described in this section applies to both public housing and tenant-based assistance, except where specifically stated otherwise. The information that the PHA must submit for HUD approval under the Annual Plan includes the discretionary policies of the various plan components or elements (for example, rent policies) and not the statutory or regulatory requirements that govern these plan components and that provide no discretion on the part of the PHA in implementation of the requirements. The PHA's Annual Plan must be consistent with the goals and objectives of the PHA's 5-Year Plan and the PHA's Equity Plan once an Equity Plan is required by §§ 5.150 through 5.180 of this title.

(a) * * *

(1) * * *

(iii) Households with individuals with disabilities and households of various races and ethnic groups residing in the jurisdiction or on the waiting list. Once the PHA has submitted its Equity Plan pursuant to the submission schedule at § 5.160 of this title, the PHA may rely on its analysis of affordable housing opportunities and the analysis conducted pursuant to § 5.154(e) of this title in connection with its Equity Plan, to the extent applicable and still up-to-date and relevant, for purposes of the PHA's Annual Plan.

* * * * *

(b) *A statement of the PHA's deconcentration and other policies that govern eligibility, selection, and admissions.* This statement must describe the PHA's policies that govern resident or tenant eligibility, selection, and admission and shall be consistent with the PHA's obligation to affirmatively further fair housing and the PHA's Equity Plan developed pursuant to §§ 5.150 through 5.180 of this title. This statement also must describe any PHA admission preferences, and any occupancy policies that pertain to public housing units and housing units assisted under section 8(o) of the 1937 Act, as well as any unit assignment policies for public housing. This statement must include the following information:

* * * * *

(o) *Civil rights certification.* (1) The PHA must certify that it will carry out its plan in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 20000d–2000d–4), the Fair Housing Act (42 U.S.C. 3601–19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101, *et seq.*), and other applicable

Federal civil rights laws. The PHA must also certify that it will affirmatively further fair housing, and that it will take no action that is materially inconsistent with the duty to affirmatively further fair housing throughout the period for which Federal financial assistance is extended pursuant to § 5.166 of this title.

(2) The certification is applicable to the 5-Year Plan and the Annual Plan, and any plan incorporated therein.

(3) The PHA shall demonstrate compliance with the certification requirement to affirmatively further fair housing by fulfilling the requirements of this paragraph (o) and § 903.15 by engaging in the following:

(i) Examines its programs and activities or proposed programs and activities consistent with the requirements of §§ 5.150 through 5.180 of this title;

(ii) Identifies fair housing issues in its programs and activities or proposed programs and activities, in accordance with § 5.154 of this title;

(iii) Specifies fair housing strategies and meaningful actions to address fair housing issues and implement fair housing goals established in the PHA's Equity Plan, consistent with § 5.154 of this title;

(iv) Works with the jurisdiction to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement;

(v) Operates its programs and activities in a manner consistent with the PHA's obligation to affirmatively further fair housing and consistent with any applicable consolidated plan under 24 CFR part 91, and consistent with any order or agreement to comply with the authorities specified in paragraph (o)(1) of this section;

(vi) Complies with the community engagement requirements set forth at § 5.158 of this title for purposes of developing the PHA's Equity Plan and the incorporation of the Equity Plan's fair housing goals pursuant to § 5.156 of this title;

(vii) Maintains records, in accordance with § 5.168 of this title, reflecting the PHA's efforts to affirmatively further fair housing; and

(viii) Takes appropriate actions, to the satisfaction of the Responsible Civil Rights Official, to remedy known fair housing or civil rights violations.

* * * * *

■ 67. In § 903.13, paragraphs (a)(1) and (2) and (c) are revised to read as follows:

§ 903.13 What is a Resident Advisory Board and what is its role in development of the Annual Plan?

(a) * * *

(1) The role of the Resident Advisory Board (or Resident Advisory Boards) is to assist and make recommendations regarding the development of the Equity Plan in accordance with § 5.158 of this title, the PHA plan, and any significant amendment or modification to the PHA plan, including based on any revision to an Equity Plan pursuant to § 5.164 of this title.

(2) The PHA shall allocate reasonable resources to ensure the effective functioning of Resident Advisory Boards. Reasonable resources for the Resident Advisory Boards must provide reasonable means for them to become informed on programs covered by the Equity Plan pursuant to §§ 5.150 through 5.180 of this title, the PHA Plan, to communicate in writing and by telephone with assisted families and hold meetings with those families, and to access information regarding covered programs on the internet, taking into account the size and resources of the PHA.

* * * * *

(c) The PHA must consider the recommendations of the Resident Advisory Board or Boards in preparing the final Equity Plan pursuant to §§ 5.150 through 5.180 of this title, the final Annual Plan, and any significant amendment or modification to the Annual Plan, including based on any revision to an Equity Plan pursuant to § 5.164 of this title, and as provided in § 903.21.

(1) In submitting the final plan to HUD for approval, or any significant amendment or modification to the plan to HUD for approval, the PHA must include a copy of the recommendations made by the Resident Advisory Board or Boards and a description of the manner in which the PHA addressed these recommendations. For purposes of any fair housing goals incorporated into the final plan submitted to HUD for approval, the PHA shall comply with the requirements set forth at §§ 5.154(h) and 5.158 of this title.

(2) Notwithstanding the 75-day limitation on HUD review, in response to a written request from a Resident Advisory Board claiming that the PHA failed to provide adequate notice and opportunity for comment, HUD may make a finding of good cause during the required time period and require the PHA to remedy the failure before final approval of the plan. The Resident Advisory Board's claims pursuant to this paragraph (c)(2) are distinct from any complaint filed with HUD pursuant to § 5.170 of this title.

■ 68. In § 903.15, the section heading, introductory text of paragraph (a), and paragraphs (b) and (c) are revised to read as follows:

§ 903.15 What is the relationship of the public housing agency plans to the Consolidated Plan and a PHA's fair housing and civil rights requirements?

(a) *Consistency with consolidated plan.* The PHA must ensure that the Annual Plan is consistent with any applicable Consolidated Plan for the jurisdiction in which the PHA is located, including any applicable Equity Plan incorporated into the applicable Consolidated Plan pursuant to § 5.156 of this title.

* * * * *

(b) *PHA fiscal year.* A PHA may request to change its fiscal year to better coordinate its planning with the planning done under the Equity Plan pursuant to § 5.160(a) of this title, the Consolidated Plan process, or by the State or local officials, as applicable.

(c) *Fair housing and civil rights requirements.* A PHA is obligated to affirmatively further fair housing in its operating policies, procedures, and capital activities. All admission and occupancy policies for public housing and Section 8 tenant-based housing programs must comply with Fair Housing Act requirements and other civil rights laws and regulations and with a PHA's plans to affirmatively further fair housing, including the PHA's Equity Plan developed pursuant to §§ 5.150 through 5.180 of this title. The PHA may not impose any specific income or racial quotas for any development or developments.

(1) *Nondiscrimination.* The PHA must carry out its Equity Plan and PHA Plan in conformity with the nondiscrimination requirements in Federal civil rights laws, including title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the Fair Housing Act, including the PHA's obligation to affirmatively further fair housing. A PHA may not assign housing to persons in a particular section of a community or to a development or building based on race, color, religion, sex, disability, familial status, or national origin for purposes of segregating populations.

(2) *Affirmatively furthering fair housing.* A PHA's policies should be designed to reduce the concentration of tenants and other assisted persons by race, color, national origin, religion, sex, familial status, and disability. Any affirmative steps or incentives a PHA

plans to take must be stated in the admission policy.

(i) All PHAs must comply with the requirements to affirmatively further fair housing, including those at §§ 5.150 through 5.180 of this title, including where those regulations impose different or greater requirements than this part.

(ii) HUD regulations provide that PHAs must take steps to affirmatively further fair housing. PHAs shall develop an Equity Plan pursuant to §§ 5.150 through 5.180 of this title. PHA policies, consistent with the analysis and fair housing goals established in the Equity Plan, shall include affirmative steps to overcome the effects of discrimination and the effects of conditions that resulted in limiting participation of persons because of their race, color, national origin, religion, sex, familial status, or disability.

(iii) Such affirmative steps may include, but are not limited to, marketing efforts, use of nondiscriminatory tenant selection and assignment policies that lead to desegregation, additional applicant consultation and information, including mobility counseling, services, and assistance in identifying affordable housing opportunities in well-resourced areas, provision of additional supportive services and amenities to a development (such as supportive services that enable an individual with a disability to transfer from an institutional setting into the community), and engagement in ongoing coordination with State and local disability agencies to provide additional community-based housing opportunities for individuals with disabilities and to connect such individuals with supportive services to enable an individual with a disability to transfer from an institutional setting into the community.

(3) *Validity of certification.* (i) A PHA's certification under § 903.7(o) will be subject to challenge by HUD where it appears that a PHA:

(A) Fails to meet the requirements set forth at §§ 5.150 through 5.180 of this title;

(B) Takes action that is materially inconsistent with the duty to affirmatively further fair housing; or

(C) Fails to comply with the fair housing, civil rights, and affirmatively furthering fair housing requirements in § 903.7(o).

(ii) If HUD challenges the validity of a PHA's certification, HUD will do so in writing specifying the deficiencies, and will give the PHA an opportunity to respond to the particular challenge in writing. In responding to the specified deficiencies, a PHA must establish, as applicable, that it has complied with fair housing and civil rights laws and regulations, or has remedied violations of fair housing and civil rights laws and regulations, and has adopted policies and undertaken actions to affirmatively further fair housing, including, but not limited to, providing a full range of housing opportunities to applicants and tenants in a nondiscriminatory manner. In responding to the PHA, HUD may accept the PHA's explanation and withdraw the challenge, undertake further investigation, or pursue other remedies available under law. HUD will seek to obtain voluntary corrective action consistent with the specified deficiencies. In determining whether a PHA has complied with its certification, HUD will review the PHA's circumstances relevant to the specified deficiencies, including characteristics of the population served by the PHA; characteristics of the PHA's existing housing stock; and decisions, plans, goals, priorities, strategies, and actions of the PHA. For purposes of the PHA's fair housing and civil rights certification pursuant to §§ 903.7(o) and 5.166 of this title, the procedures set forth at § 5.166(b) shall apply.

■ 69. In § 903.17, paragraph (a), the introductory text of paragraph (b), and paragraph (c) are revised to read as follows:

§ 903.17 What is the process for obtaining public comment on the plans?

(a) The PHA's board of directors or similar governing body must conduct a public hearing to discuss the PHA plan (either the 5-Year Plan and/or Annual Plan, as applicable) and invite public comment on the plan(s). The hearing must be conducted at a location that is convenient to the residents served by the PHA. For purposes of the incorporation of the Equity Plan required by § 5.156 of this title, the community engagement requirements of § 5.158 of this title shall apply.

(b) For purposes of the PHA's 5-Year Plan and Annual Plan, and notwithstanding the requirements set forth at § 5.158 of this title for purposes of the Equity Plan's incorporation into such plans pursuant to § 5.156 of this title, not later than 45 days before the public hearing is to take place, the PHA must:

* * * * *

(c) PHAs shall conduct reasonable outreach activities to encourage broad public participation in the PHA plans. This outreach is for purposes of the 5-Year Plan and Annual Plan. The requirements of § 5.158 of this title shall apply for purposes of the Equity Plan.

■ 70. In § 903.19:

■ a. Paragraph (c) is amended by removing the period at the end of the paragraph and adding ''; and'' in its place; and

■ b. Paragraph (d) is added.

The addition reads as follows:

§ 903.19 When is the 5-Year Plan or Annual Plan ready for submission to HUD?

* * * * *

(d) The PHA has incorporated the fair housing goals from its Equity Plan pursuant to § 5.156 of this title.

■ 71. In § 903.23, paragraph (f) is revised to read as follows:

§ 903.23 What is the process by which HUD reviews, approves, or disapproves an Annual Plan?

* * * * *

(f) *Recordkeeping.* PHAs must maintain records reflecting actions the PHA has taken to affirmatively further fair housing, including documentation related to the PHA's Equity Plan described at § 5.168 of this title, and documentation relating to the PHA's certifications made pursuant to §§ 5.166 of this title and 903.7(o).

■ 72. Section 903.25 is revised to read as follows:

§ 903.25 How does HUD ensure PHA compliance with its PHA plan?

A PHA must comply with the rules, standards, and policies established in the plans. To ensure that a PHA is in compliance with all policies, rules, and standards adopted in the plan approved by HUD, HUD shall, as it deems appropriate, respond to any complaint concerning PHA noncompliance with its plan. If HUD should determine that a PHA is not in compliance with its plan, HUD will take whatever action it deems necessary and appropriate. For purposes of the PHA's Equity Plan, the procedures set forth at §§ 5.162, 5.170, 5.172, and 5.174 of this title shall apply.

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

■ 73. The authority citation for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

■ 74. In § 983.57:

■ a. Revise the introductory text of paragraph (b)(1);

■ b. Remove paragraph (b)(1)(iii); and

■ c. Redesignate paragraphs (b)(1)(iv) through (vii) as paragraphs (b)(1)(iii) through (vi), respectively.

The revision reads as follows:

§ 983.57 Site selection standards.

* * * * *

(b) * * *

(1) Project-based assistance for housing at the selected site is consistent

with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the PHA Plan under 24 CFR part 903, the PHA Administrative Plan, and the PHA's Equity Plan developed pursuant to §§ 5.150 through 5.180 of this title. In developing the standards to apply in determining whether a proposed PBV development will be selected, a PHA must consider the following:

* * * * *

Marcia L. Fudge,

Secretary.

[FR Doc. 2023–00625 Filed 2–8–23; 8:45 am]

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska; Amendment 122 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area; Pacific Cod Trawl Cooperative Program; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[230118–0016]

RIN 0648–BL08

Fisheries of the Exclusive Economic Zone Off Alaska; Amendment 122 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area; Pacific Cod Trawl Cooperative Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to implement Amendment 122 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI). Amendment 122 would establish the Pacific Cod Trawl Cooperative Program (PCTC Program or Program) to allocate Pacific cod harvest quota to qualifying groundfish License Limitation Program (LLP) license holders and qualifying processors. The PCTC Program would be a limited access privilege program (LAPP) for the harvest of Pacific cod in the BSAI trawl catcher vessel (CV) sector. This proposed action is necessary to increase the value of the fishery, minimize bycatch to the extent practicable, provide for the sustained participation of fishery-dependent communities, ensure the sustainability and viability of the resource, and promote safety and stability in the harvesting and processing sectors. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the BSAI FMP, and other applicable law.

DATES: Submit comments on or before March 13, 2023.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2022–0072, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0072 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to the Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: 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 by NMFS. All comments received are a part of the public record and would generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender would be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted via mail to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Stephanie Warpinski; or online at *www.reginfo.gov/public/do/PRAMain.* Find the particular information collections online by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Electronic copies of the Environmental Assessment, the Regulatory Impact Review, and the Social Impact Analysis (collectively referred to as the ''Analysis''), and the draft Finding of No Significant Impact prepared for this proposed rule may be obtained from *https://www.regulations.gov* or from the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/region/alaska.*

FOR FURTHER INFORMATION CONTACT: Stephanie Warpinski, 907–586–7228 or *stephanie.warpinski@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the groundfish fisheries in the exclusive economic zone (Federal waters) of the BSAI under Federal regulations implementing the BSAI FMP. The North Pacific Fishery Management Council (Council) prepared the BSAI FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the BSAI FMP appear at 50 CFR parts 600 and 679.

A notice of availability (NOA) for Amendment 122 was published in the **Federal Register** on December 30, 2022 (87 FR 80519, December 30, 2022), with comments invited through February 28, 2023. All relevant written comments received by the end of the comment period (See **DATES**), whether specifically directed to the NOA or this proposed rule, will be considered by NMFS in the approval/disapproval decision for Amendment 122. Commenters do not need to submit the same comments on both the NOA and this proposed rule. Comments submitted on this proposed rule by the end of the comment period (See **DATES**) will be considered by NMFS in our decision to implement measures recommended by the Council and will be addressed in the response to comments in the final rule.

I. Background of Pacific Cod Management in the BSAI

A. History of Pacific Cod Management in BSAI

Pacific cod (*Gadus macrocephalus*) is one of the most abundant and valuable groundfish species harvested in the BSAI. Vessels harvest Pacific cod using trawl and non-trawl gear. Non-trawl gear includes hook-and-line, jig, and pot gear. Vessels harvesting BSAI Pacific cod operate as catcher vessels (CVs) that harvest and deliver the fish for processing or as catcher/processors (C/Ps) that harvest and process the catch on board.

The BSAI FMP and implementing regulations require that, after consultation with the Council, NMFS specify an overfishing level (OFL), an acceptable biological catch (ABC), and a total allowable catch (TAC) for each target species or species group of groundfish, including Pacific cod, on an annual basis. The OFL is the level above which overfishing is occurring for a species or species group. The ABC is the level of a species' annual catch that accounts for the scientific uncertainty in the estimate of OFL and any other scientific uncertainty. Under the BSAI FMP, the ABC is set below the OFL. The TAC is the annual catch target for a species or species group, derived from the ABC by considering social and economic factors and management uncertainty, and in the case of BSAI Pacific cod, after considering any harvest allocations for guideline harvest level (GHL) fisheries managed by the State of Alaska (State) and occurring only within state waters. Under the BSAI FMP, the TAC must be set lower than or equal to the ABC.

The OFLs, ABCs, and TACs for BSAI groundfish are specified through the annual harvest specification process. A detailed description of the annual harvest specification process is

provided in the final 2022 and 2023 harvest specifications for groundfish of the BSAI (87 FR 11626, March 2, 2022). The annual harvest specification process for BSAI Pacific cod is briefly summarized here. Specific examples of Pacific cod OFLs, ABCs, TACs, and other apportionments of Pacific cod used in this preamble are based on the 2022 specifications from the final 2022 and 2023 harvest specifications for groundfish of the BSAI, unless otherwise noted.

For Pacific cod, the harvest specifications establish separate OFLs, ABCs, and TACs for the Bering Sea (BS) subarea and the Aleutian Islands (AI) subarea of the BSAI. As noted above, before the Pacific cod TACs are established, the Council and NMFS consider social and economic factors and management uncertainty, as well as two factors that are particularly relevant to BSAI Pacific cod: the Pacific cod state waters GHL fisheries and an overall limit on the maximum amount of TAC that can be specified for all BSAI groundfish species combined.

Once the groundfish TACs are established, regulations at 50 CFR 679.20(a)(7)(i) allocate 10.7 percent of the BS Pacific cod TAC and 10.7 percent of the AI Pacific cod TAC to the Community Development Quota (CDQ) Program for the exclusive harvest by Western Alaska CDQ groups. Section 305(i) of the Magnuson-Stevens Act authorizes six nonprofit corporations called CDQ groups representing 65 communities to receive exclusive harvest privileges of groundfish, including Pacific cod, and specifies the methods for allocating these harvest privileges.

After subtraction of the CDQ allocation from each TAC, NMFS combines the remaining BS and AI TACs into one BSAI non-CDQ Pacific cod TAC, which is available for harvest by nine non-CDQ fishery sectors. BSAI Pacific cod have been fully allocated to these sectors since 2008 with the implementation of Amendment 85 to the BSAI groundfish FMP (72 FR 50787, September 4, 2007). Regulations at § 679.20(a)(7)(ii)(A) define the nine Pacific cod non-CDQ fishery sectors in the BSAI and specify the percentage allocated to each. The non-CDQ fishery sectors are defined by a combination of gear type (*e.g.,* trawl, hook-and-line), operation type (*i.e.,* CV or CP), and vessel size categories (*e.g.,* vessels greater than or equal to 60 ft in length overall). Through the annual harvest specifications process, NMFS allocates an amount of the combined BSAI non-CDQ TAC to each of these nine non-CDQ fishery sectors. The non-CDQ fishery sectors and the percentage of the BSAI non-CDQ Pacific cod TAC allocated to each sector are shown in Table 1 below.

TABLE 1—ALLOCATIONS OF THE BSAI NON-CDQ PACIFIC COD TAC TO THE NON-CDQ FISHERY SECTORS

Non-CDQ fishery sector	Percentage allocation of the BSAI non-CDQ TAC
Hook-and-line CVs greater than or equal to 60 ft length overall (LOA)	0.2
Jig gear	1.4
Pot C/Ps	1.5
Hook-and-line and pot CVs less than 60 ft LOA	2.0
American Fisheries Act (AFA) trawl C/Ps	2.3
Pot CVs greater than or equal to 60 ft LOA	8.4
Non-AFA trawl C/Ps (Amendment 80 C/Ps)	13.4
Trawl CVs	22.1
Hook-and-line C/Ps	48.7

Allocations of Pacific cod to the CDQ Program and to the non-CDQ fishery sectors are further apportioned by seasons. Season dates for the CDQ and non-CDQ fishery sectors are established at § 679.23(e)(5). In general, regulations apportion trawl gear allocations among three seasons that correspond to January 20–April 1 (A season), April 1–June 10 (B season), and June 10–November 1 (C season) of the year. The specific season dates also are provided in the annual harvest specifications for groundfish of the BSAI. Depending on the specific CDQ Program or non-CDQ fishery sector allocation, between 40 and 70 percent of the Pacific cod allocation is apportioned to the A season, which is historically the most lucrative fishing season due to the presence of valuable roe in the fish and the good quality of the flesh during that time of year.

As noted in Table 1, the trawl CV sector is apportioned 22.1 percent of the BSAI Pacific cod non-CDQ TAC, which is further divided into seasonal allowances between the A, B, and C seasons. A season is issued 74 percent of the trawl CV sector's total apportionment, B season is issued 11 percent, and C season is issued 15 percent. The trawl CV sector impacted by the implementation of the PCTC Program would include all trawl CVs that are assigned to an LLP license with a trawl gear endorsement for the BS and/or AI.

After NMFS deducts estimated incidental catch from the trawl CV sector apportionment, each seasonal allowance is assigned to the trawl CV sector as a BSAI directed fishing allowance (DFA). The DFA for the A and B seasons is the amount that would be available for harvest by the PCTC program cooperatives under the proposed LAPP. The DFA for the C season would remain available for harvest as a limited access fishery open to all CVs with the required trawl gear and area endorsements on the LLP license assigned to the vessel. Because the non-CDQ sector allocations continue to be defined BSAI-wide, sectors remain free to redeploy between the two areas. However, if the non-CDQ portion of the TAC in either sub-area (BS or AI) is reached NMFS will close directed fishing for Pacific cod in that subarea.

B. Groundfish License Limitation Program (LLP) Licenses

The Groundfish License Limitation Program (LLP) was implemented in 1998 (63 FR 52642, Oct. 1, 1998) and issued a limited number of LLP licenses to qualifying participants based on historical participation in the Federal groundfish fisheries off Alaska. The Council and NMFS have long sought to control the amount of fishing effort in the BSAI groundfish fisheries to ensure that the fisheries are sustainably managed and do not exceed established biological thresholds. One of the measures used by the Council and NMFS to control fishing effort, including in the BSAI Pacific cod

fishery, is the LLP. A groundfish LLP license authorizes a vessel to participate in a directed fishery for groundfish in the BSAI in accordance with specific area and species endorsements, vessel and gear designations, and the maximum length overall (MLOA), or any exemption from the MLOA, specified on the license. With some limited exceptions, the LLP requires that each vessel that participates in federally managed groundfish fisheries off Alaska be designated on a groundfish LLP license. In other words, an LLP license is generally required to participate in the BSAI groundfish fisheries. The LLP is authorized in Federal regulations at 50 CFR 679.4(k), definitions relevant to the program are at § 679.2, and prohibitions are at § 679.7.

All Federal Pacific cod harvesting activity in the BSAI requires an LLP license and the correct endorsements. The Council elected to have LLP license holders and eligible processors receive PCTC Program Quota Share (QS) instead of vessel owners.

C. Transferable AI Endorsements

Amendment 92 to the BSAI FMP (74 FR 41080, August 14, 2009) issued new AI area endorsements for trawl CV LLP licenses if minimum recent landing requirements in the AI were met. Under this action, NMFS issued AI trawl endorsements to (1) non-AFA catcher vessels less than 60 ft LOA, if those vessels made at least 500 metric tons (mt) of landings of Pacific cod in State of Alaska (State) waters adjacent to the Aleutian Islands Subarea during 2000 through 2006 (*i.e.* in the parallel fishery); and (2) non-AFA catcher vessels equal to or greater than 60 feet LOA if those vessels made at least one landing in State waters during the Federal groundfish season in the Aleutian Islands Subarea and made at least 1,000 mt of Pacific cod landings in the BSAI during 2000 through 2006. Amendment 92 intended to recognize the recent participation by CVs in the AI by allowing those vessels to extend their fishing operations to Federal waters using trawl endorsed LLP licenses.

The AI endorsements issued under Amendment 92 were intended to facilitate shoreside deliveries of Pacific cod to AI communities and provide additional harvest opportunities for non-AFA trawl vessels who had demonstrated a dependence on AI groundfish resources. The AI endorsements issued to LLP licenses used by non-AFA trawl CVs less than 60 ft are severable from the LLP license they were initially issued and transferable to another LLP licenses with a MLOA under 60 ft. The transferability provision was intended to allow smaller vessels operational flexibility and avoid stranding an AI endorsement on an LLP license being used by a vessel that no longer fished in the AI. No other area endorsement in the LLP can be transferred separately from an LLP license.

NMFS modified the LLP license transfer regulations to clarify the process for transferring an AI endorsement independent of the LLP license. As part of that application process, the person would need to specify the LLP license to which the transferred AI area endorsement would be assigned.

D. Limited Access Privilege Programs

Section 303A of the Magnuson-Stevens Act authorizes the establishment of Limited Access Privilege Programs (LAPPs) that allocate limited access privileges, such as fishing quota, to a closed class of participants. The Council has recommended and NMFS has implemented LAPPs to address a wide range of fishery management objectives, including providing stability in fishery harvests, resolving allocative disputes, increasing the value of the fishery, minimizing bycatch to the extent practicable, providing for the sustained participation of fishery-dependent communities, and promoting safety. Another example of a North Pacific LAPP is the Central Gulf of Alaska (GOA) Rockfish Program. An extensive discussion of LAPPs can be found in sections 2.5 and 2.9.8 of the Analysis (see **ADDRESSES**).

By allocating quota shares and issuing exclusive harvest privileges to fishing cooperatives, a LAPP allows vessel operators to make operational choices to improve safety, reduce bycatch, and reduce discard of fish because the strong incentive to maximize catch in the minimum amount of time has been reduced. Vessel operators can choose to fish in a slower, less wasteful fashion, use modified gear with a lower harvest rate but which reduces bycatch, coordinate with other vessel operators to avoid areas of high bycatch, or otherwise operate in ways that limit bycatch and increase efficiency.

LAPPs can also improve the profitability of participating fishing operations. In most cases, LAPPs provide harvesters greater flexibility in tailoring their fishing operations to specific fisheries, which can reduce operational costs. Additionally, vessel operators may avoid costly improvements in vessel size or fishing power designed to outcompete other harvesters in a race for fish. Slower fishing rates can improve product handling and quality and increase the ex-vessel price of the fish delivered to the processor. Vessel operators can also choose to consolidate less profitable fishing operations onto fewer vessels through a cooperative system.

LAPPs can increase the costs of entering the fishery substantially because the expected long-term profits from the QS assigned to the permits increase their value, and, in most circumstances, permits must be purchased prior to entry. Increased cost of entry may limit the ability of persons without the financial wherewithal to purchase the permits or QS necessary to participate in these fisheries. Consolidation can limit employment opportunities as well, if fewer vessels are used to harvest the quota. Compliance costs can also increase to ensure that NMFS can monitor the harvesting and processing of fish. Administration of LAPPs typically requires greater effort and cost than non-LAPP fisheries due to the greater precision in catch accounting required to track the harvest of fish and proper debiting of accounts. Participants in LAPPs may also use their excess fishing capacity to expand operations into other fisheries that are not managed by LAPPs and increase the race for fish in those fisheries unless they are constrained. These and other effects have been addressed in the design of previous LAPPs by limiting the amount of consolidation in the fishery through caps on the ownership and use of QS.

E. PCTC Program Overview

Based on experience with past LAPPs, and after weighing the potential advantages and disadvantages, the Council unanimously recommended the PCTC Program at its October 2021 meeting to reduce bycatch and improve the safety of fishery participants while increasing the potential for greater economic returns to those holding the harvest privileges.

The Council had previously adopted a statement of purpose and need for this action, emphasizing that conditions in the fishery had resulted in a race for fish with a number of negative consequences. This proposed Program would be responsive to that statement of purpose and need by slowing the race for fish. This Program would provide incentives to increase the length of the directed fishing season and allow deliveries to be distributed over a longer timeframe, which would benefit both harvesters and processors. The current fishery management system, in which harvesters compete with each other for a portion of the Pacific cod TAC,

incentivizes harvesters to fish in weather conditions that could be unsafe, and this incentive would be reduced or avoided under the proposed LAPP. Several conditions warranted this proposed change in management, including a decline in Pacific cod TAC, an increase in the number of LLP licenses (and associated vessels) participating in this sector and the risk of additional entrants, the compressed length of the fishery in recent years, the decreased product quality caused by a race for fish in recent years, need to minimize bycatch, and safety concerns.

In response, the Council recommended, and NMFS proposes the PCTC Program with the overarching objectives of increasing the value of the fishery, minimizing bycatch to the extent practicable, providing for the sustained participation of fishery-dependent communities, and promoting safety in the harvesting and processing sectors. The PCTC Program proposes a complex suite of measures to ensure the goals of the Program are met and improve fishery conditions for all participants. The Program would require participants holding QS to form harvesting cooperatives in association with an eligible processor to harvest the annual harvest privilege of Pacific cod. This Program would also require cooperatives to set-aside a portion of their allocation for delivery to an Aleutian Island shoreplant. A shoreplant is a land-based processing plant and is a subset of the term ''shoreside processor'' which is defined in § 679.2 to include processing vessels that are moored or otherwise fixed in a location (*i.e.,* stationary floating processors), but not necessarily located on land.

The following section provides an overview of the complex suite of measures included in the proposed Program. Each Program element will be addressed in additional detail in subsequent sections of this preamble.

1. Pacific Cod Allocations and Prohibited Species Catch (PSC) Limits

The PCTC Program would allocate QS to qualifying LLP license holders and processors based on their qualifying catch and processing history during the BSAI trawl CV sector A and B season for the Pacific cod fishery. The Pacific cod QS allocations would be based on qualifying catch or processing history as recommended by the Council. In addition, aggregate PSC limits for halibut and crab would be established through the annual harvest specification process for participants in the PCTC Program. Allocations of Pacific cod and PSC limits are discussed in further detail in section II of the preamble.

2. PCTC Program Quota Share

The PCTC Program would issue QS to qualified LLP licenses that had qualifying catch history of BSAI Pacific cod during the qualifying years, and to processors based on their processing history during the qualifying years. The Council selected 2009 to 2019 as the qualifying years for processors and most LLP licenses, with the additional years of 2004 through 2009 for LLP licenses with transferable AI endorsements. In making initial allocations of QS, NMFS would look at targeted landings of BSAI Pacific cod from a Federal fishery during the qualifying years, and then determine what proportion of those landings were authorized by each participating LLP license, and which proportion was delivered to each participating processor. Targeted species are those species retained in an amount greater than any other species for which a TAC is specified pursuant to § 679.20(a)(2). To use their QS, LLP license holders would be required to join a PCTC Program cooperative and processors would be required to associate with a cooperative. Trawl CVs eligible to participate in the proposed Program include all trawl CVs that are named on an LLP license with a trawl gear endorsement and BS and/or AI area endorsement. Section II in the preamble further discusses QS and participants.

3. Trawl CV Sector

The PCTC Program allocations would be harvested by trawl CVs that join a PCTC Program cooperative. The trawl CV sector that would be eligible to participate in the proposed Program includes all trawl CVs designated on an LLP license with BS and/or AI area endorsements, including both American Fisheries Act (AFA) and non-AFA trawl CVs.

Most AFA CVs rely heavily on pollock harvested in the BS, but Pacific cod is the second most important species in terms of volume for these vessels in aggregate. While nearly all the groundfish harvested by the larger AFA vessels is delivered to shoreside processors, many of the smaller AFA vessels deliver their catch to a mothership. AFA vessels are categorized as either exempt or non-exempt; AFA exempt means that they are not limited based on their catch history by sideboards, and AFA non-exempt means that they are limited by sideboards based on their catch history. The harvest of BSAI Pacific cod by AFA trawl CVs is currently managed through private inter-cooperative agreements.

Non-AFA trawl CVs are typically between 60 ft and 125 ft, but occasionally, vessels less than 60 ft participate in the sector. Fisheries important to non-AFA trawl CVs include BSAI Pacific cod, groundfish in the GOA, halibut IFQ (using longline gear), and salmon in the state commercial seine fisheries.

A total of 114 LLP licenses are assigned a trawl CV endorsement for the BS. Of those 114 LLP licenses, 42 also have an AI endorsement. One LLP license is endorsed only for the AI, and that license has both a trawl endorsement and a hook-and-line endorsement. Annual estimates of the trawl CV sector's gross ex-vessel value for Pacific cod are provided in Section 2.8.7 of the Analysis.

Given that initial allocations under this proposed rule will be based on historical participation, no substantial shifts in patterns of fishery landings between communities are anticipated, nor are substantial shifts expected in the accompanying patterns of revenue accruing to municipalities in Alaska from local raw fish taxes or shared state fishery business taxes.

4. Processor Sector

The PCTC program would allocate QS to eligible processors, both shoreside and C/Ps acting as motherships, which could serve to stabilize landings in communities in proportion to their qualifying history of BSAI Pacific cod processing.

Eligible processors would be allocated a percentage of QS based on their processing history that would function to promote stability in the processing sector. Processors eligible to receive QS would include active processors who hold an active FFP or FPP. Eligible processors would be issued their QS on a new QS permit. Processor-issued QS would represent 22.5 percent of the total PCTC Program CQ each year.

Section 2.9.5 of the Analysis provides a count of the years processing firms were active (received deliveries of targeted Federal BSAI Pacific cod from trawl CVs). These counts represent all the processing firms (including C/Ps that are no longer eligible to process Pacific cod as a mothership) that were reported in the NMFS Catch Accounting System (CAS) data. Preamble sections II.E and VII.B and C describe the processor sector in further detail.

5. Allocations of TAC in the PCTC Program

Under this proposed PCTC Program, 22.1 percent of the annual BSAI Pacific cod non-CDQ TAC would continue to be allocated to the trawl CV sector using

the current seasonal apportionments. Of that 22.1 percent, a portion is allocated for directed fishing by trawl CVs targeting Pacific cod (as DFAs), and another portion is reserved as an incidental catch allowance (ICA) for Pacific cod caught as bycatch in other BSAI trawl CV groundfish fisheries. Under the PCTC Program, A and B season DFAs would be issued as CQ to PCTC program cooperatives. Of the total PCTC Program annual allocations, 22.5 percent of CQ would be derived from QS allocated to processors and 77.5 percent would be derived from QS allocated to LLP license holders. Section IV discusses CQ and PCTC Program cooperatives in further detail. The C season would continue to be managed as a limited access fishery open to any trawl CV with the required area endorsements. Section VI.B of the preamble discusses the C season in further detail.

6. PCTC Program Cooperatives

The PCTC Program would authorize the formation of harvester cooperatives in association with an eligible processor. A cooperative would be formed by holders of qualified LLP licenses with trawl CV Pacific cod QS, in association with processors. Each LLP license could be assigned to only one cooperative. Each year, a cooperative representative would be required to submit an Application for PCTC Program Cooperative Quota. CQ would be issued to each cooperative by NMFS based on the aggregate QS of the cooperative members and associated processors. Cooperative associations could change on an annual basis without penalty. Cooperatives would be required to identify a list of trawl CVs eligible to harvest a portion of that cooperative's CQ in the annual cooperative application. Any trawl CV named on an LLP license with a BS and/or AI trawl endorsement could be identified as an eligible harvester within a PCTC cooperative, regardless of whether the LLP license was issued QS. Section IV in this preamble further describes cooperatives in the PCTC Program.

7. AI CQ Set-Aside

The PCTC Program would require cooperatives to reserve 12 percent of the BSAI A season trawl CV sector CQ as a set-aside for delivery to an Aleutian Islands shoreplant if the City of Adak or the City of Atka files a notice of intent to process that year. The set-aside would be in effect during the A and B seasons and any remaining portion of the AI CQ set-aside would be reallocated to cooperatives in the same proportion as the initial allocation if the intent to process is withdrawn during the A or B season by the representative of the City of Adak or the City of Atka. NMFS would require an inter-cooperative agreement that describes how the set-aside will be administered by the cooperatives to ensure that harvests from the BS do not exceed the minimum set-aside, how the cooperatives intend to harvest the set-aside, and how cooperatives would ensure that CVs less than 60 ft LOA assigned to an LLP license with a transferable AI trawl endorsement have the opportunity to harvest 10 percent of the AI set-aside for delivery to an Aleutian Island shoreplant. A cooperative intending to harvest any amount of the set-aside would be required to provide the cooperative's plan for coordinating harvest and delivery of the set-aside with an Aleutian Island shoreplant in the annual cooperative application.

8. C Season Limited Access Fishery

The PCTC Program would allocate only the A and B season non-CDQ Pacific cod trawl CV DFA to cooperatives. The C season non-CDQ Pacific cod trawl CV DFA, which accounts for approximately 15 percent of the annual trawl CV sector allocation, would remain as a trawl CV limited access fishery open to any trawl CV with a BS and/or AI area trawl endorsement.

9. Use Caps

The PCTC program would include ownership and use caps to prevent a permit holder from acquiring an excessive share of the fishery as required under MSA Section 303A(c)(5)(D). No person would be permitted to hold more than 5 percent of harvester-issued QS or 20 percent of processor-issued QS. In addition, no vessel would be able to harvest more than 5 percent of the annual CQ, and no company would be able to process more than 20 percent of CQ. The PCTC Program would also include legacy exemptions for persons over these ownership and use caps at the time of PCTC Program implementation, allowing participants to maintain levels of historical participation rather than forcing divestiture.

10. Gulf of Alaska Sideboard Limits

The PCTC Program includes GOA groundfish sideboard limits for LLP licenses that receive allocations of QS. The Program would change the AFA non-exempt GOA groundfish sideboard and halibut PSC limits for all non-exempt AFA CVs and associated LLP licenses based on the GOA fishing activity of these vessels in the aggregate during the PCTC Program qualifying years. GOA halibut PSC limits would be managed as an annual limit for all AFA non-exempt CVs and associated LLP licenses. The proposed PCTC Program does not change existing sideboard exemptions for AFA GOA—exempt CVs and does not add sideboard limits for non-AFA trawl CVs in the GOA.

However, holders of LLP licenses that authorize these categories of vessels will not be permitted to lease CQ derived from their LLP licenses as a condition of benefiting from a GOA sideboard exemption. If the vessel assigned to the qualified GOA sideboard-exempt LLP license does not fish in the GOA during the calendar year—with the exception of fishing in the Central GOA Rockfish Program—the LLP license holder would be able to lease CQ generated by their LLP license for that calendar year. In addition, holders of LLP licenses that authorized GOA sideboard-exempt CVs with less than 300 mt of average annual qualifying BSAI Pacific cod catch history would be able to lease CQ generated by their LLP license.

11. Monitoring and Enforcement

All CVs harvesting CQ and making deliveries to a shoreside processor would be in the full observer coverage category, which requires the vessel to maintain observer coverage on 100 percent of its fishing trips. The PCTC Program would maintain the current observer coverage exception for CVs delivering unsorted codends to motherships specified at § 679.50(a). CVs in the full observer coverage category would be required to provide a functional and operational computer with NMFS-supplied software installed to facilitate the electronic entry of observer data collected on board the vessel. At the time of Program implementation, AFA CVs would be required to provide communications equipment necessary to facilitate the point-to-point communication necessary to transmit observer data to NMFS on a daily basis. For the first three years after implementation, the PCTC Program would exempt non-AFA CVs from the requirement to facilitate at-sea transmission of observer data. If a non-AFA CV has the necessary communication equipment already installed on the vessel prior to the end of the 3-year exemption, the vessel would be required to allow the observer to use the equipment. After three years, all vessels would be required to comply with requirements for at-sea observer data transmission. Monitoring and enforcement provisions would be

implemented to track quota, harvest, PSC, and use caps. NMFS would report weekly vessel-level PSC information as authorized under Magnuson-Stevens Act Sec. 402(b)(2)(A).

II. PCTC Program Quota Share (QS)

Under the PCTC Program, QS for Pacific cod would be assigned to eligible LLP licenses (with and without transferable AI endorsements) and newly created processor PCTC Program QS permits. The amount of QS allocated to individual LLP licenses or processors would be determined by historic participation relative to other LLP licenses or processors, as described below. QS holders would be required to join or associate with a cooperative, and the aggregate QS of cooperative members and associated processors would yield an exclusive harvest privilege for PCTC Program cooperatives, which NMFS would issue as CQ each year. Of the total annual CQ, 77.5 percent would be derived from QS issued to LLP licenses and 22.5 percent would be derived from QS issued to processors. CQ would represent a portion of the A and B season BSAI trawl CV sector Pacific cod DFA that is available only to the holders of CQ. This Program would establish criteria for harvesters and processors in the BSAI trawl CV sector Pacific cod fisheries to qualify for and receive QS, criteria for allocating QS in the initial year of implementation, and criteria for the transfer of QS.

NMFS would assign PCTC Program QS to eligible LLP licenses based on qualifying catch history (legal landings) of targeted BSAI Pacific cod authorized by that LLP license during the qualifying years 2009 through 2019, excluding the year with the lowest total harvest for each license. The qualifying period for LLP licenses with transferable AI endorsements also includes harvest by vessels that generated the transferable AI endorsement from January 20, 2004 through September 13, 2009. The amount of QS assigned to an LLP license relative to the total QS assigned to all LLP licenses determines the percentage of the harvesters' allocation (77.5 percent of the A and B season DFA) that a harvester could designate to a cooperative.

Allocations of QS to processors with an eligible FFP or FPP (subject to eligibility requirements under BSAI FMP Amendment 120 to limit C/Ps acting as mothership) is based on processing history in the Federal BSAI Pacific cod trawl CV fishery. QS would be assigned to eligible processors based on each processor's targeted Pacific cod processing history during the qualifying years 2009 through 2019, excluding the year with the least amount of processing history. The amount of QS assigned to a processor PCTC Program QS permit relative to the total QS assigned to all PCTC Program QS permits determines the percentage of the processors' allocation (22.5 percent of the A and B season DFA) that a processor could designate to a cooperative. NMFS would assign QS to holders of eligible LLP licenses if they submit a timely and complete Application for PCTC Program QS. A similar process would be used for the processor QS allocation. Processors with qualifying processing history would be assigned QS on a processor permit for each unit of processing history.

A. Eligibility To Receive PCTC QS

This section defines and describes the requirements necessary to identify eligible LLP licenses and processors that would receive PCTC Program QS. ''Eligible PCTC Program LLP license'' means an LLP license assigned to a vessel that made qualifying catch history (legal landings) of targeted trawl CV BSAI Pacific cod during the PCTC Program qualifying years. ''Eligible PCTC Program processor'' means a processing facility with an active Federal processor permit that has historically received Pacific cod legal landings.

''Legal landings'' means the retained catch of Pacific cod caught by a CV using trawl gear in the BSAI during the directed fishing season for Pacific cod that was: (1) made in compliance with state and Federal regulations in effect at that time, (2) recorded on a State of Alaska fish ticket or shoreside logbook for shoreside deliveries or in observer data for mothership deliveries, and (3) was the predominately retained species on the fishing trip (*i.e.* Pacific cod was targeted). A legal landing must have been authorized by either (1) an LLP license participating in the A or B season of a Federal or parallel State water groundfish fishery during the qualifying years 2009 to 2019, or (2) an LLP license with a transferable AI endorsement that, prior to receiving that AI endorsement, participated in the AI parallel fishery from January 20, 2004 through September 13, 2009. Legal landings for the PCTC Program would not include landings in the CDQ fishery, in the State of Alaska GHL fishery, or made during the C season by vessels participating in a Federal or parallel State water fishery. For LLP licenses, NMFS would determine which LLP licenses were assigned to catcher vessels that harvested and offloaded BSAI Pacific cod that met all legal landings requirements. For processors, NMFS would determine which processors with active Federal permits received deliveries of legal landings of BSAI Pacific cod.

B. Rationale for Allocations

The Council recommended and NMFS proposes establishing eligibility for the Program by considering the catch history associated with LLP licenses that authorized a vessel to make legal landings of targeted BSAI trawl CV Pacific cod during the qualifying years. The Council recommended against considering catch history occurring after December 31, 2019 during the development of this Program to discourage speculative entry into the fishery. QS would be allocated to eligible LLP licenses based on legal landings of BSAI trawl CV Pacific cod from 2009 through 2019. In addition, for LLP licenses with transferable AI endorsements, NMFS would consider catch history of targeted AI Pacific cod in the parallel fishery prior to receiving a transferable AI endorsement from January 20, 2004 through September 13, 2009. The Council recommended these qualifying years to ensure that both current and historical participation would be considered in allocating QS. This range of qualifying years is comparable with the Council's recommendations for awarding catch history in other rationalized fisheries (or fisheries managed under a LAPP).

The Council considered alternative methods for allocating QS to participants in the BSAI trawl CV Pacific cod sector in the development of the Program. These alternatives are addressed in the Analysis developed to support this proposed action (see **ADDRESSES**). The Program would balance allocation among recent and historical participants. As with other QS programs (*e.g.,* BSAI Crab Rationalization, and IFQ halibut and sablefish), the Program would allocate QS based on recent and historical harvesting and processing, as opposed to alternative allocative methods such as allocating equal shares or auctioning QS. In other North Pacific quota share programs, NMFS has allocated QS based on landings that occurred during a specific time period as a means of equitably distributing QS to participants based on their relative dependence on the fishery. This is the first LAPP in the North Pacific that allocates harvester QS to processors based on their processing history.

One option for this Program considered the most recent five years of history (2014 through 2019) in the BSAI trawl CV Pacific cod fishery, but that

range of years undervalued long-term participation, which the Council believes is an important consideration for the PCTC Program. A second option the Council rejected included catch history years from 2004 through 2019 because it would include several years before the implementation of the current BSAI Pacific cod sector allocations established by Amendment 85. These sector allocations, combined with a decline in the BSAI Pacific cod stock in recent years, have substantially changed fishery management and operations.

A third option the Council considered included allocations on a blend of catch history and AFA sideboard limit history. This approach would have awarded catch history to LLP licenses assigned to vessels that did not make legal landings of BSAI trawl CV Pacific cod during the qualifying years but instead had catch history of BSAI Pacific cod from 1997 that contributed to a sideboard limit for all AFA trawl CVs in the BSAI. The Council recommended maintaining the long-standing policy that sideboard limits are not sector allocations. Instead, this proposed Program would award catch history to LLP licenses based on legal landings that were reported by the vessel assigned to the LLP license, consistent with the Council's past practice.

In calculating QS to be issued to eligible LLP license holders and processors, the lowest year of catch history during the qualifying period would be dropped. Including a one-year drop provision would allow all participants to benefit from removing a non-representative participation year from the catch history used to issue their QS. The public testimony provided to the Council in support of this option noted that the catch history eligibility period is 11 years, and unforeseen events have occurred for many BSAI trawl CV Pacific cod fishery participants over that period that would reduce the amount of catch history awarded to their LLP license. The Council considered this to be a reasonable approach and consistent with Council and NMFS's practice in previous rationalization programs because it recognizes contingencies in fishing behavior over the qualifying years.

Some legal landings during 2009 through 2019 were made by vessels with two or more associated LLP licenses, and in these cases the Council recommended assigning the qualifying catch history to one LLP license in one of two ways. First, the LLP license owners may come to an agreement regarding the division of qualifying catch history and submit this agreement to NMFS when they apply for QS. Or, if no agreement is provided by the LLP license holders, the owner of the vessel that made the qualifying catch would assign the history to one of the LLP licenses that authorized the catch. This approach is consistent with NMFS's approach for assigning legal landings in all previous North Pacific rationalization programs. In addition, the Council received public comment in support of this approach.

The Council determined that an allocation of harvest QS to processors is necessary to provide stability to the sectors involved in the fishery after it transitions from a limited access fishery to a LAPP. The Analysis (see **ADDRESSES**) did not identify an optimal percentage of QS that should be allocated to processors to provide stability for harvesters and processors. Instead, the allocation amount recommended and proposed in this action—77.5 percent of QS allocated to harvesters and 22.5 percent to processors—is based on an agreement brought to the Council by members of the affected CV and processing sectors. Analysts noted that within the range of percentages considered for QS to be issued to processors, the leverage that each sector would have at any specific percentage would vary and the effects are likely to be most realized by firms that have less leverage outside the BSAI trawl CV Pacific cod fishery.

Under the proposed Program, NMFS would allocate QS to eligible processors based on their processing history of legal landings of BSAI Pacific cod during the qualifying years. The QS issued to processors would be divided among eligible processors based on the percentage of legal landings of Pacific cod they processed during the A and B seasons during the qualifying years compared to the total legal landings of BSAI Pacific cod processed by all eligible processors. Allocating harvest shares to processors is intended to maintain a balance of market power within the industry under the LAPP.

C. Calculations of Initial Allocations

The Council recommended, and NMFS proposes to set initial allocations through a specific process set forth in this section.

The QS allocations for LLP license holders with no transferable AI endorsement would be calculated based on the sum of the 10 highest years of Pacific cod qualifying catch for the LLP license out of the 11 qualifying years recommended by the Council. If an LLP license was only used in a single year or if the LLP license was used in ten or less years, a year with no qualifying catch would be dropped. If the LLP license was transferred within the qualifying years of 2009 to 2019, all legal landings during the period would still be assigned to that LLP. For LLP licenses with transferable AI endorsements, NMFS would also include the catch history of the vessel used to generate the endorsement from January 20, 2004 through September 13, 2009 (for these LLP licenses, NMFS would be looking at 16 years of catch history and dropping the lowest year). The current LLP license owner would be entitled to all QS derived from the LLP license and transferable AI endorsement catch history, unless compensation was required by a private agreement associated with the sale of the LLP license. The QS would not be divided among LLP licenses.

NMFS proposes that for each LLP license holder, the qualifying year with the least amount of legal landings be dropped, and the total of the remaining years summed to determine the LLP license's QS units. This process would be done for all eligible LLP licenses, with and without transferable AI endorsements. The sum of all QS units issued would determine the harvesters total initial QS pool allocated to LLP licenses. All harvester QS units combined would represent 77.5 percent of the A and B season BSAI Pacific cod trawl CV DFA.

An active processor would be eligible to receive initial QS allocations in the PCTC Program if they hold a Federal Fisheries Permit (FFP) or Federal Processing Permit (FPP) with processing history in the Federal BSAI Pacific cod trawl CV fishery between 2009 and 2019, which is the set of qualifying years recommended by the Council. An active processor is a processor firm that holds an FFP or FPP upon the effective date of the final rule implementing this Program.

The QS for processors would be allocated based on the sum of legal landings delivered in the 10 highest years out of the 11 qualifying years recommended by the Council. If the FFP or FPP received deliveries of qualified catch in ten years or less, a year with no qualifying legal landings would be dropped. Processing companies that are no longer active—meaning that they do not have a current FFP or FPP upon the effective date of the final rule implementing this Program—would not be issued QS.

For each processor, the sum of all years of deliveries of legal landings is calculated, the year with the smallest amount of delivered legal landings is dropped, and the total of the remaining years determines the FFP or FPP's QS

units. This process is done for all processors. The sum of all the processor QS units would determine the denominator of the initial QS pool for processors. All processor QS units combined would represent 22.5 percent of the A and B season BSAI Pacific cod trawl CV DFA.

D. PCTC Program Official Record

NMFS would establish a PCTC Program official record containing all necessary information concerning PCTC Program legal landings during the qualifying period, vessel and processor ownership, LLP license holdings, and any other information needed for assigning QS. The official record would include landings data (from the Catch Accounting System), documentation of LLP licenses, FFPs, and FPPs, and observer data. NMFS would presume the official record is correct and an applicant wishing to amend the official record would have the burden of establishing otherwise through an evidentiary and appeals process. That process is described in Section III.C of this preamble below.

The official record would be used to establish the initial pool of QS that would be distributed to eligible harvesters and processors.

Each metric ton of legal landing credited to a qualifying LLP license would result in one QS unit. This initial QS pool would be adjusted should the official record be amended through successful claims brought by an eligible participant or other corrections to the underlying data. See Parts E and F of this section below for more detail. As with other LAPPs (*e.g.,* Central GOA Rockfish Program or the Amendment 80 Program), NMFS would establish ownership and use caps using this initial QS pool. Ownership and use caps are described further under Section VII of this preamble.

E. Harvester Allocations of QS in the PCTC Program

Under this proposed rule, the Regional Administrator would allocate PCTC Program QS to an eligible harvester—*i.e.* LLP license holder—who submits a timely Application for PCTC Program QS that is approved by NMFS based on the amount of BSAI trawl Pacific cod legal landings assigned to an LLP license.

NMFS proposes to assign a specific number of Pacific cod QS units to each LLP license with no transferable AI endorsement based on the legal landings of the LLP license using information from the PCTC Program official record as of December 31, 2022 according to the following procedures:

(1) Determine the BSAI trawl CV Pacific cod legal landings authorized by an LLP license for each calendar year from 2009 through 2019.

(2) Drop from consideration the calendar year in which the LLP license had the least amount of legal landings. If an LLP license had one or more years with zero harvest, drop one of those years.

(3) Sum the Pacific cod legal landings for the 10 years in which each LLP license had the most landings. This yields the QS units for each LLP license.

NMFS proposes to assign a specific number of Pacific cod QS units to each LLP license with a transferable AI endorsement based on the legal landings of each vessel that was used to generate the transferable AI endorsement and subsequent legal landings authorized by the LLP license associated with the endorsement using information from the PCTC official record according to the following procedures:

(1) Determine the BSAI trawl CV Pacific cod legal landings for each vessel used to generate the transferable AI endorsement from January 20, 2004 through September 13, 2009 and the LLP license associated with that transferable AI endorsement from September 14, 2009 through the end of 2019.

(2) Drop from consideration the calendar year which the vessel used to generate the transferable AI endorsement (January 20, 2004–September 13, 2009) or the associated LLP license (2009–2019) that had the least amount of legal landings. If a vessel or LLP license had one or more years with zero harvest, drop one of those years.

(3) Sum the Pacific cod legal landings for the 15 years in which the relevant LLP license had the highest amount of legal landings. This yields the QS units for LLP licenses with transferable AI endorsements.

After the QS units for the LLP licenses with and without transferable AI endorsements are determined under part 3 of each scenario above, NMFS would sum all harvester QS units to calculate the harvesters' total QS pool. NMFS would then determine what portion of the 77.5 percent of the A and B season DFA allocated as harvester QS under the PCTC Program is represented by each LLP license's QS units. To do so, NMFS would divide each LLP license's total QS units by the sum (Σ) of all QS units for all eligible LLP licenses based on the PCTC official record as presented in the following equation:

LLP license's QS units/(Σ QS units for all LLP licenses) × 100 = Percentage of the total harvester QS pool allocated to that eligible LLP license. The result (quotient) of this equation is the percentage of the total harvesters' portion of PCTC Program allocation (77.5 percent of the A and B season DFA) that a QS holder could assign to a cooperative each year.

F. Processor Allocations of QS in PCTC Program

The Council recommended and NMFS proposes allocating harvest shares to processors to provide stability to all of the sectors involved in the fishery after it transitions from status quo conditions to the PCTC Program.

Under the Program, processors with an eligible FPP or FFP that have history of processing in the Federal BSAI Pacific cod trawl CV fishery would be eligible to receive QS based on each processor's processing history (subject limitations on the number of C/Ps authorized to operate as motherships under BSAI FMP Amendment 120). Processors eligible to receive QS would be issued a new PCTC Program processor QS permit and could annually associate with a PCTC Program cooperative. Harvesters in the cooperative would then have access to the CQ derived from processor-held QS.

If a processor holding QS does not associate with a cooperative, that processor's QS would be divided among cooperatives in the same proportion as the CQ assigned to individual cooperatives that year. If a processor associated with more than one cooperative during a year, the CQ derived from their processor permit would be divided among the cooperatives in the same proportion as the CQ derived from LLP licenses within each associated cooperative.

Cooperatives would have some limitations on the manner in which they can use CQ derived from processor-held QS. To address vertically integrated companies where a processing company may also own LLP licenses or CVs, the Council intended processor held QS to be divided among cooperative CVs proportionately to the QS attached to LLP licenses onboard the harvesting vessel. In other words, a cooperative should not allow a CV or LLP license owned by that processor to harvest a greater proportion of the CQ resulting from processor-held QS than the LLP license would have brought into the cooperative absent any processor-held QS. The cooperative would monitor this provision and include reporting on harvest of CQ resulting from processor-held QS in the PCTC Program cooperative annual report.

Processors that are no longer active (no longer hold an FPP or FFP upon the effective date of the final rule implementing this Program) would not be issued QS. The processing history associated with those processors would be deducted from the total amount of eligible processing history during the qualifying years when calculating the distribution of QS to processors.

NMFS proposes to assign a specific number of Pacific cod QS units to each processor permit based on the qualifying landings delivered to the processor using information from the PCTC official record as of December 31, 2022 according to the following procedures:

(1) Determine the BSAI trawl CV Pacific cod legal landings in the A and B seasons delivered to each eligible processor for each calendar year from 2009 through 2019.

(2) Drop from consideration the calendar year in which the processor received the least amount of legal landings. If a processor had one or more years with zero processing of Pacific cod legal landings, drop one of those years.

(3) Sum the Pacific cod legal landings of the highest 10 years for each eligible processor. This yields the QS units for each processor.

(4) Divide the QS units for each eligible processor by the sum (Σ) of all QS units for all processors based on the PCTC official record as presented in the following equation:

Processor's QS units/Σ all processor QS units × 100 = Percentage of the total processor QS allocation for that processor. The result (quotient) of this equation is the percentage of the total processors' portion of PCTC Program allocation (22.5 percent of the A and B season DFA) that a QS holder could designate to a cooperative each year.

TABLE 2—PCTC PROGRAM INITIAL QS POOL IN UNITS

Species	PCTC Program initial QS pool in units
Pacific cod (Holders of LLP Licenses with no transferable AI endorsement).	Σ highest 10 years of BSAI Pacific cod catch history in metric tons in the PCTC official record as of December 31, 2022 for LLP license holders.

TABLE 2—PCTC PROGRAM INITIAL QS POOL IN UNITS—Continued

Species	PCTC Program initial QS pool in units
Pacific cod (Holders of LLP licenses with transferable AI endorsements).	Σ highest 15 years of BSAI Pacific cod catch history in metric tons in the PCTC official record as of December 31, 2022 for holders of LLP licenses with transferable AI endorsements.
Pacific cod (All processors).	Σ highest 10 years BSAI Pacific cod processing history in metric tons in the PCTC official record as of December 31, 2022 for that BSAI Pacific cod for eligible processors.

G. PSC Limits in PCTC Program

The Council's experience with rationalization programs has shown that, as the race for fish ends, fleets can make operational choices that promote reductions in PSC. Reducing PSC is an important benefit of the Program and reflects a substantial amount of public testimony highlighting the importance of minimizing bycatch to the extent practicable in this rationalization program consistent with the Council's purpose and need statement and National Standard 9.

PCTC Program cooperatives would annually be apportioned halibut and crab PSC limits based on the percentage of total BSAI Pacific cod CQ allocated to their cooperative (derived from both harvester and processor allocations of QS). NMFS would monitor PSC use at the sector level and cooperatives would be responsible for managing PSC limits at the cooperative level. Cooperatives would be prohibited from fishing under the Program if a halibut PSC limit is reached for the cooperative or from fishing in a crab bycatch limitation zone if a crab PSC limit is reached in that relevant area. PSC limits may be transferred between cooperatives to cover any overages or to allow a cooperative to continue harvesting Pacific cod CQ.

Halibut PSC

Annually, the Council recommends to NMFS an apportionment of the total halibut PSC allowances for the BSAI trawl limited access sector. The BSAI trawl limited access sector is composed of the trawl CV sector and the AFA C/P sector. The specific percentage of the total halibut PSC limit assigned to the trawl limited access sector may change annually based on the Council's recommendation. Each year after apportioning the halibut PSC limit to the trawl CV sector for the A and B season, NMFS will apply a fixed percentage reduction to that PSC limit. In the first year of the program, NMFS will apply a 12.5 percent reduction, and in the second year and each year thereafter, NMFS will apply a 25 percent reduction (see section 2.10.3.1).

Because this halibut PSC reduction is limited to the PCTC Program, it would apply only to the halibut PSC apportionment for the A and B season Pacific cod trawl CV sector. The recommended reduction to halibut PSC limits under the Program would be calculated annually and published in the annual harvest specifications after the Council recommends and NMFS approves the BSAI trawl limited access sector's PSC limit apportionments to fishery categories.

Under the Program and this proposed rule, NMFS would apportion halibut PSC limits assigned to the BSAI trawl limited access sector Pacific cod fishery between the trawl CV and AFA C/P sectors. Specifically, the halibut PSC limit would be divided between the trawl CV and AFA C/P sectors based on historical use during the qualifying years, with 98 percent apportioned to trawl CVs and 2 percent apportioned to AFA C/Ps. NMFS would further apportion the halibut PSC for the trawl CV sector between the PCTC Program (A and B seasons) and the trawl CV Pacific cod C season. The C season apportionments would be established before applying PSC limit reductions described above. Of the halibut PSC limit apportioned to the trawl CV sector, 95 percent would be available for the PCTC Program in the A and B seasons with 5 percent reserved for the C season. Any amount of the PCTC Program PSC limit remaining after the B season would be reallocated to the trawl CV limited access fishery in the C season.

Currently, 50 CFR 679.21(b)(2) and (e)(5) authorize NMFS, based on Council recommendations, to establish seasonal apportionments of halibut and crab PSC limits for the BSAI trawl limited access sector fishery categories to maximize the ability of the fleet to harvest the available groundfish TAC and to minimize PSC mortality to the extent practicable. The factors considered annually are (1) seasonal distribution of prohibited species, (2) seasonal distribution of target groundfish species relative to prohibited species distribution, (3) PSC needs on a

seasonal basis relevant to prohibited species biomass and expected catches of target groundfish species, (4) expected variations in PSC rates throughout the year, (5) expected changes in directed groundfish fishing seasons, (6) expected start of fishing effort, and (7) economic effects of establishing seasonal PSC apportionments on segments of the target groundfish industry. Based on these criteria, the Council recommends, and NMFS annually publishes the proposed seasonal PSC limit apportionments to maximize harvest among fisheries and seasons while minimizing PSC mortality.

The halibut PSC limit for the BSAI trawl limited access sector is established at 745 mt (§ 679.21(b)(1)). The BSAI trawl limited access sector halibut PSC limit is further divided by fishery categories during the annual specifications process, with 391 mt (52.5 percent) of the sector limit designated for use in the BSAI Pacific cod fishery in 2019. The halibut PSC limit for the BSAI trawl limited access sector is an annual limit that is currently not apportioned by season.

The following example using 2019 halibut PSC limits illustrates how the PSC reduction under the PCTC Program would work once fully implemented. The total 2019 BSAI trawl limited access sector halibut PSC limit apportionment to the Pacific cod fishery category was 391 mt. Had the Program been in place, 98 percent of that total would have been apportioned to the trawl CV Pacific cod sector (383 mt) while the remaining 2 percent would have been apportioned to the AFA C/P sector (9 mt). The trawl CV halibut PSC limit portion (383 mt) would have been further apportioned between the rationalized A and B seasons at 95 percent (364 mt) and the non-rationalized C season at 5 percent (19 mt). Finally, the halibut PSC limit for the rationalized A and B seasons would have been reduced by 25 percent to 273 mt, resulting in a halibut PSC limit savings of 91 mt. Any amount of the PCTC Program halibut PSC limit remaining after the B season would have been rolled over to the C season trawl CV limited access fishery but future savings in halibut PSC that is achieved by not allocating 25 percent of the PSC limit apportioned to the trawl Pacific cod sector in the A and B season would not be used or reallocated for use in other fisheries.

Crab PSC

The Council recommended, and NMFS proposes, a 35 percent reduction in crab PSC limits for PCTC Program trawl CVs during the A and B season. For the crab PSC limits, the 35 percent reduction in PSC limits for the PCTC Program would be effective immediately when the Program is implemented (no phase-in). The annual crab PSC limits available to the BSAI trawl limited access sector Pacific cod fishery category would be apportioned between the trawl CV sector and the AFA C/P sector based on the proportion of BSAI Pacific cod allocated to the two sectors: 90.6 percent to BSAI trawl CVs and 9.4 percent to AFA C/Ps.

Crab PSC limits include red king crab (Zone 1), C. opilio (COBLZ), and C. bairdi (Zone 1 and Zone 2), are specified annually based on abundance and spawning biomass and are established by regulation for the BSAI trawl limited access sector, which is divided between the trawl CV and the AFA C/P sectors (§ 679.21(e)(3)(iv)). Using the 2019 crab PSC limits as a reference point combined with the recent decrease in abundance and biomass estimates, we can calculate that the proposed 35 percent reduction in crab PSC limits in 2022 would have resulted in an 80 percent reduction for red king crab (Zone 1), a 69 percent reduction for C. opilio (COBLZ), and a 48 percent reduction for C. bairdi (Zone 1 and Zone 2).

Crab PSC limits would be based on the proportion of BSAI Pacific cod allocated to the trawl CV sector (90.6 percent) and the AFA C/P sector (9.4 percent). Of the crab PSC limit apportioned to the trawl CV sector, 95 percent would be available for the PCTC Program (A and B seasons) and 5 percent would be reserved for the C season. As with halibut PSC, any amount of the PCTC Program PSC limit remaining after the B season would be reallocated to the C season trawl CV limited access fishery.

The following example using 2019 crab PSC limits illustrates how the PSC reduction would work once fully implemented. The 2019 BSAI trawl limited access sector red king crab (zone 1) PSC limit apportionment to Pacific cod fishery category was 2,954 animals, which would result in 2,676 animals apportioned to the BSAI trawl CVs and 278 animals apportioned to the AFA C/Ps. Had the Program been in place, the BSAI trawl CV crab PSC limit would have been further apportioned between the rationalized A and B seasons at 95 percent and the non-rationalized C season at 5 percent. Thus, 2,542 animals would have been apportioned to the rationalized A and B seasons and 134 animals would have been apportioned to the C season. Finally, the crab PSC limit for the rationalized A and B seasons would have been reduced by 35 percent, resulting in a limit of 1,652 animals, which would have been a savings of 890 animals. Any amount of the PCTC Program crab PSC limit remaining after the B season would be rolled over to the C season trawl CV limited access fishery, but future reductions in crab PSC would not be allocated and therefore would not be available for use or reallocation for use in other fisheries.

III. Application Process

A. Application for PCTC QS

A person would be required to submit an Application for PCTC Program QS in order to receive an initial allocation of PCTC QS. NMFS would require an application to ensure that QS is assigned to the appropriate person(s) and to provide a process for resolving claims of legal landings that are contrary to the official record. Once a person submits an Application for PCTC Program QS that is approved by NMFS, that person would not need to resubmit an application for QS in future years.

A completed Application for PCTC Program QS must be received by NMFS no later than 1700 hours AKST 30 days after the effective date of the final rule or, if sent by U.S. mail, postmarked by that time. Objective written evidence of timely application will be considered proof of a timely application.

NMFS will mail an application package to all potentially eligible LLP license holders, AI endorsement holders, and processors based on the address on record at the time the application period opens upon effectiveness of the final rule. This package would include a letter informing potentially eligible LLP license holders and processors whether NMFS has determined they are eligible to receive QS, and if so, the amount of qualifying catch history calculated by NMFS based on the official record. Applications will be available on the Alaska Region website and interested persons could also contact NMFS to request an application package. An application could be submitted electronically or by mail.

Briefly, the Application for PCTC Program QS would need to contain the following elements:

- Identification and contact information for the applicant;
- LLP licenses held by the applicant;
- FFP or FPP held by the applicant;
- Any other information required on the application; and
- The applicant's signature and certification. If the application is completed by a third party on behalf of the potential QS recipient, authorization

for that person to act on behalf of the potential QS recipient.

B. Ninety Day Transfer Window for Non-Exempt AFA LLP holders

For LLP licenses associated with AFA non-exempt vessels, within 90 days of initial issuance of QS, the owner of the LLP license may transfer QS to another LLP license associated with an AFA non-exempt vessel. These QS transfers are subject to the QS ownership cap further described in section VII.B of this proposed rule. This provision allows LLP license holders that engaged in AFA sideboard harvesting agreements during the qualifying period to transfer resulting QS back to the originating LLP license.

The transferor and the transferee must submit to NMFS a letter as evidence of their agreement to transfer the QS in this one-time opportunity. In the letter, they must explain how much QS would be transferred and to which LLP license or licenses.

If only one party submits evidence of an agreement, the QS would remain with the LLP license to which it was initially assigned.

C. Application Review and Appeals

Persons applying for QS will state in their application whether or not they agree with NMFS's calculation of catch and processing history from the official record. If they disagree, they can submit supporting documentation regarding their catch history along with their application for QS. If any applicant disagrees with NMFS's initial calculations and provides documentation to support claims of catch history that are inconsistent with the official record, NMFS would determine whether such documentation is sufficient to amend the official record. If not, NMFS would inform the applicant that the submitted documentation was insufficient and provide the applicant with a 30-day evidentiary period to further support their claims. After the close of the 30-day evidentiary period, NMFS would make its final decision about the official record and issue an initial administrative determinations (IAD) to the applicant. IADs would include all the information described below. Applicants who disagree with the IAD may appeal NMFS's decision through the NOAA National Appeals Office according to the procedures found at 50 CFR 679.43.

NMFS's IAD would indicate the deficiencies and discrepancies in the application or revised application, including any deficiencies in the information or evidence submitted to support an applicant's claims challenging the official record. NMFS's IAD would indicate which claims could not be approved based on the available information or evidence and provide information on how an applicant could appeal an IAD. An applicant who appeals an IAD would not receive any QS based on contested landings data unless and until the appeal was resolved in the applicant's favor. Once NMFS has approved an application for PCTC Program QS in its entirety, NMFS would assign QS units to an applicant's LLP license or issue a processor a PCTC Program QS permit with a specified number of QS units.

PCTC Program QS would be issued to the person identified in an approved application for QS. Once PCTC Program QS is issued, the QS units would remain attached to the associated LLP license or processor's PCTC Program QS permit in most circumstances and could not be severed or otherwise be transferred independently. There are several limited exceptions to non-severability: (1) QS attached to LLP licenses with transferable AI endorsements could be transferred along with the endorsement to another LLP license that meets the criteria for a transferable AI endorsement; (2) QS could be fully or partially transferred during the limited 90-day transfer provision described in section III.B of this proposed rule; (3) if a participant qualifies for a legacy exemption and receives an initial allocation of QS in excess of a program ownership cap, that participant's QS could be split during a transfer to prevent any recipient from exceeding a cap; and (4) QS could be separated from a processor QS permit in any transfer of processor-held QS if necessary to prevent any transferee from exceeding an ownership or use cap.

D. Transferring QS

1. Limits on Transferring QS

As stated above, once QS is assigned to an LLP license, it generally could not be divided or transferred separately from that LLP license. For LLP licenses with transferable AI endorsements, after issuance QS generally could not be divided or separated from the transferable endorsement. However, there is an exception for both LLP licenses and processor-held QS permits that were initially issued QS greater than the ownership cap (*i.e.* for persons granted a legacy exemption from the ownership cap). For these QS holders, the amount of QS over the cap may be severed from the permit (and divided to multiple buyers) at the time of transfer because the QS caps do not allow a legacy exemption to extend beyond initial issuance. This provision would allow the transfer of an LLP license or processor-held QS permit subject to a legacy exemption without the transferee exceeding a QS ownership cap. In addition, for QS assigned to a processor holding a PCTC Program QS permit—even if the transferor does not hold QS in excess of any cap—QS could be divided or transferred separately from that processor permit if a sale would otherwise result in the transferee exceeding an ownership or use cap described in Section VII of this preamble. NMFS would not approve transfers of an LLP license with PCTC QS or a processor-held QS permit if the transfer would cause a person to exceed the 5 percent harvester QS ownership cap or the 20 percent processor QS ownership cap.

If a QS holder has a legacy exemption from the QS ownership cap, NMFS would not approve any QS permit transfers to that person unless and until that person's holdings of QS are reduced to an amount below the QS holdings cap.

2. Methods for Transferring QS

Any transfer of QS would require approval by NMFS to properly track ownership and use cap accounting. For harvesters, QS could be transferred with an LLP license or a transferable AI endorsement to another person through the existing LLP transfer provisions described in regulations at 50 CFR 679.4(k)(7).

3. Transferring PCTC Program QS

In order to transfer PCTC QS, a QS holder would submit to NMFS an application to transfer an LLP license or an application to transfer a processor QS permit. NMFS would require that the application include any additional information needed for the transfer of QS, including the sale price of QS. Applications to transfer an LLP license with PCTC QS, a transferable AI endorsement with QS, or a processor-held PCTC Program QS permit could be submitted electronically (see proposed regulatory text at § 679.130 for detailed information). Transfer forms would be posted on the NMFS Alaska Region website.

B. CQ Transfers

Under this Program, a cooperative could transfer all or part of its CQ to another cooperative for harvest subject to the limitations imposed by the ownership and use caps described in Section VII of this preamble and the proposed regulations. Transfer provisions would provide flexibility for

cooperatives to trade Pacific cod for harvest or PSC to support the PCTC program cooperative fishing. The ability to trade PSC allows cooperatives to account for unforeseen circumstances, but the incentive to avoid hitting a cooperative PSC limit remains because of the cost of acquiring PSC from another cooperative.

To effectuate an inter-cooperative transfer, a designated representative of each cooperative would need to agree to and complete a CQ transfer application, which would be available on eFish or on the NMFS Alaska Region website. A transfer of CQ would not be effective until approved by NMFS. If the cooperative attempting to acquire CQ has reached any relevant use caps, NMFS would deny the transfer application.

C. Cooperative Reports

Under the PCTC Program, cooperatives would be asked to provide voluntary annual reports to the Council. Consistent with other cooperative programs developed by the Council, these reports would include specific information on the structure, function, and operation of the cooperatives.

Each year, the Council would receive reports outlining the cooperatives' performance at one of its regularly scheduled meetings. These reports would be used by the Council to ensure the program is functioning as intended and to solicit timely information on issues that may need to be addressed by the Council. The Council requested that each cooperative report include information on CQ leasing activities and any penalties issued, harvest of CQ resulting from processor-held QS, cooperative membership, cooperative management, and performance (including implementation of the AI set-aside when in effect).

IV. PCTC Program Cooperatives

The PCTC Program is a cooperative-based program that requires participants to join a cooperative each year. Cooperatives would receive annual CQ derived from the QS held by the harvesters and processors that join the cooperative. Under the Program, cooperative members could coordinate their fishing operations, potentially reduce operational expenses, and increase the quality and revenue from the product, among other benefits.

A. Requirements for Forming a PCTC Cooperative

Under the PCTC Program, forming a cooperative would require at least three LLP licenses with PCTC QS. Each cooperative would be required to associate with at least one licensed processor. There would be no limitation on the number of LLP licenses that may join a single cooperative, the number of processors a cooperative could associate with, nor on the amount of QS a single cooperative could control. There also would be no limitation on the number of cooperatives that may form, but each LLP license could be assigned to only one cooperative. A person may hold multiple LLP licenses, meaning that a single LLP license holder who holds three or more LLP licenses could form a cooperative in association with a processor.

Annually, each cooperative would be required to submit an Application for PCTC Program Cooperative Quota, identifying the CVs that would be eligible to harvest a portion of that cooperative's CQ. NMFS would process an application for CQ and, if approved, issue CQ permits and apportioned amounts of annual crab and halibut PSC limits to the cooperative. CQ would constitute an exclusive harvest privilege for the A and B seasons. Under certain conditions, each cooperative would be required to set aside 12 percent of the A season CQ for delivery to an Aleutian Islands shoreplant as described further under the AI Community Protections section below. Cooperative members would determine their own harvest strategy, including which vessels could harvest the CQ.

An LLP License holder may change cooperatives and processor associations may change annually without penalty. However, harvesters may not change cooperatives and cooperatives may not change their processor associations during the PCTC Program fishing season. If an LLP license is sold or transferred during the season, it would remain with the cooperative until the end of the season. Inter-cooperative formation would be allowed and an inter-cooperative agreement would be required to implement the AI set-aside and to allow for efficient trading of CQ or PSC limits between cooperatives.

The following would be required to form a PCTC Program cooperative under the proposed Program:

- A complete Application for PCTC Program CQ must be submitted by November 1 of the year prior to fishing in the cooperative;
- A copy of the business license issued by the state in which the PCTC cooperative is registered as a business entity;
- A copy of the articles of incorporation or partnership agreement of the PCTC Program cooperative;
- A list of the names of all persons, to the individual level, holding an ownership interest in the LLP licenses that join the cooperative and the percentage ownership each person and individual holds in each LLP license;
- A list of trawl CVs eligible to harvest a portion of that cooperative's CQ; and
- A copy of the cooperative agreement signed by the members of the PCTC Program cooperative, which must include, at a minimum, the following terms: (1) QS holders affiliated with processors cannot participate in price setting negotiations except as permitted by antitrust law; (2) monitoring provisions, including sideboard protections in the GOA, sufficient to ensure compliance with the PCTC Program; and (3) a provision that specifies the obligations of PCTC QS holders who are members of the cooperative to ensure the full payment of cost recovery fees that may be due.

Annual CQ would be issued to each cooperative by NMFS based on the aggregate QS of all cooperative members. NMFS would issue CQ by season and rely on the cooperatives to ensure the seasonal limits are not exceeded. Any unused A season CQ may be harvested during the B season. CQ would not be designated for harvest in a management area (*i.e.,* BS or AI) but may be harvested from either area. However, NMFS will annually establish a separate AI DFA to support the calculation of the AI set-aside. For more information, see Section V of this preamble.

B. Application for Cooperative Quota (CQ)

The PCTC Program would require cooperatives to submit an annual application for CQ by November 1, which is prior to the start of each fishing year. NMFS would use these applications to issue CQ permits, establish annual cooperative accounts for catch accounting purposes, and identify specific vessels that would be associated with each cooperative. As with other LAPPs, the information received in this application would be used to review ownership and control information for various QS holders to ensure that QS and CQ use caps are not exceeded (see Section IX of this preamble for additional detail on use caps).

An application for CQ must be submitted to NMFS no later than November 1 of the year prior to fishing under the CQ permit to be considered timely. The cooperative's designated representative would be responsible for submitting the application for CQ on behalf of the cooperative members. If the designated representative for the

cooperative were to fail to submit a timely application for CQ, NMFS would not issue CQ to the members of the cooperative for that fishing year. This requirement would require all participants in the Program to organize as a cooperative prior to the November 1 deadline each year and submit a complete application to avoid delay of CQ issuance.

The Applications for CQ would be available on the NMFS Alaska Region website and would be able to be submitted electronically through eFish or the NMFS Alaska Region website. The information that would be required in the application is detailed in the proposed regulatory text at § 679.131. The following list summarizes the information that would be required:

- PCTC Program LLP license identification numbers;
- Processor-held PCTC Program processor QS permit number(s) and name of the processor that holds that each QS permit;
- PCTC Program QS ownership documentation;
- PCTC Program cooperative business address or identifier identification;
- Members of the PCTC Program cooperative and the associated processor;
- Trawl vessel identification, including the name(s) and USCG documentation number of vessel(s) eligible to harvest the CQ issued to the PCTC Program cooperative;
- Designated representative and cooperative members' signatures and certification; and
- Authorization for the designated representative to act on behalf of the cooperative to complete the application.

C. Issuing PCTC CQ

NMFS would review the CQ applications for accurate information, use caps, and payment of any fees, including cost recovery. If approved, NMFS would issue a CQ permit to the cooperatives. Permits would not be issued until the annual harvest specifications are recommended by the Council for the upcoming year. Permits would generally be issued in early January for the upcoming year. The CQ permit would list the metric tons of Pacific cod by A and B season that the cooperative may harvest, the metric tons of apportioned halibut PSC, and the number of each species of crab PSC that the cooperative may use during the fishing year. The following is a brief description of the process NMFS would use for calculating the amount of CQ issued to a cooperative.

CQ would be issued for A and B seasons separately, with total CQ issued to all cooperatives in each season equal to the DFA. The remaining TAC for the trawl CV sector would be the ICA for Pacific cod caught as bycatch in other fisheries, such as pollock. The DFA would be further subdivided into 77.5 percent for the harvester QS pool and 22.5 percent for the processor QS pool. These two QS pools would be converted into CQ and issued as CQ to cooperatives.

D. Issuing PSC With CQ

The proposed Program would authorize NMFS to issue halibut and crab PSC to each cooperative based on the proportion of Pacific cod QS, but NMFS would monitor PSC use at the sector level. PSC used by PCTC cooperative vessels would be deducted from the PCTC PSC limits when they are directed fishing for BSAI Pacific cod during the A and B seasons.

E. Processors in Cooperatives

A person holding a PCTC Program processor QS permit would be required to associate with a cooperative to realize the economic benefits associated with their QS. This creates an economic incentive for the processors that hold QS to either associate with a cooperative on an annual basis or sell their permit to a processor that would associate with a cooperative. The CQ derived from processor-held QS that is not associated with a specific cooperative would be distributed among all the cooperatives that form in a given year in the same proportion as the CQ assigned to each cooperative. A cooperative may associate with a processor that does not hold PCTC QS.

A cooperative cannot designate CQ derived from processor-held QS to a vessel owned by that processor in a greater amount than the LLP license associated with the vessel would have brought into the cooperative absent any processor-held QS. This provision is intended to ensure that processor-held CQ is not utilized to primarily benefit vessels in the cooperative that are owned by the processor. The cooperative would monitor this provision and include reporting on harvest of CQ derived from processor-held QS in the PCTC Program cooperative annual report.

F. CQ Transfers

Under this Program, a cooperative could transfer all or part of its CQ to another cooperative for harvest subject to the limitations imposed by the ownership and use caps described in Section VII of this preamble and the proposed regulations. Transfer provisions would provide flexibility for cooperatives to trade Pacific cod for harvest or PSC to support the PCTC program cooperative fishing when it cannot be avoided. The ability to trade PSC allows cooperatives to account for unforeseen circumstances, but the incentive to avoid hitting a cooperative PSC limit remains because of the cost of acquiring PSC from another cooperative.

To effectuate an inter-cooperative transfer, a designated representative of each cooperative would need to agree to and complete a CQ transfer application, which would be available on eFish or on the NMFS Alaska Region website. A transfer of CQ would not be effective until approved by NMFS. If the cooperative attempting to acquire CQ has reached any relevant use caps, NMFS would deny the transfer application.

G. Cooperative Reports

Under the PCTC Program, cooperatives would be asked to provide voluntary annual reports to the Council. Consistent with other cooperative programs developed by the Council, these reports would include specific information on the structure, function, and operation of the cooperatives.

Each year, the Council would receive reports outlining the cooperatives' performance at one of its regularly scheduled meetings. These reports would be used by the Council to ensure the program is functioning as intended and to solicit timely information on issues that may need to be addressed by the Council. The Council requested that each cooperative report include information on CQ leasing activities and any penalties issued, harvest of CQ resulting from processor-held QS, cooperative membership, cooperative management, and performance (including implementation of the AI set-aside when in effect).

V. AI Community Protections

The Council and NMFS have long supported the development of a local CV fleet in remote AI communities, and a variety of programs have been implemented to encourage economic opportunities for local CVs and processing operations. Some of these programs include: the allocation of the AI pollock TAC to the Aleut Corporation, an Alaska Native tribal organization that represents specific community interests in Adak (70 FR 9856; March 1, 2005); allocations of Western AI golden king crab to the Adak Community Development Corporation under the BSAI Crab Rationalization Program (70 FR 10174; March 2, 2005); and the establishment of a Community Quota Entity Program in the AI that

provides additional fishing opportunities for residents of fishery dependent communities in the AI and sustains participation in the halibut and sablefish IFQ fisheries (79 FR 8870; February, 14, 2014). Adak, the AI community with the most historical participation in the Pacific cod fishery, also acts as a port of embarkation and disembarkation for personnel on board C/Ps and CVs harvesting groundfish in the AI.

The Council previously sought to ensure the continued participation of remote AI fishing communities in the Pacific cod fishery through BSAI Amendment 113, which was recommended by the Council and implemented by NMFS at the start of the 2017 fishing year (81 FR 84434, November 23, 2016). Amendment 113 set aside a portion of the BSAI Pacific cod TAC for harvest by catcher vessels delivering their catch to Aleutian Islands shoreplants. However, the U.S. District Court for the District of Columbia vacated the rule implementing Amendment 113, finding the record for that action failed to demonstrate consistency with the Magnuson-Stevens Act's National Standards (*Groundfish Forum* v. *Ross*, 375 F.Supp.3d 72 (D.D.C. 2019)). As a result of this court decision, the regulations implementing Amendment 113 are no longer in effect.

Shortly after the vacatur of Amendment 113, the Council initiated action to rationalize the BSAI trawl CV Pacific cod fisheries and included options to meet the objective of supporting sustained participation by AI communities in the Pacific cod trawl CV fishery. Under the PCTC Program, cooperatives would be required to collectively set-aside 12 percent of the A season CQ for delivery to an Aleutian Island shoreplant (AI CQ set-aside) during years in which an AI community representative notifies NMFS of their intent to process Pacific cod.

This provision is different from the set-aside implemented under Amendment 113 but would achieve a similar goal. NMFS proposes new regulations to implement the PCTC Program AI community measures, which will include some provisions that are similar or identical to the vacated regulations that implemented Amendment 113. For example, Amendment 113 defined an ''Aleutian Island shoreplant'' to mean a processing facility that is physically located on land west of 170° W longitude within the State of Alaska (State), and this same definition will apply under the PCTC Program. Defining Aleutian Island shoreplant is necessary because the existing term ''shoreside processor'' in § 679.2 can include processing vessels that are moored or otherwise fixed in a location (*i.e.,* stationary floating processors), but not necessarily located on land. When Amendment 113 was vacated, the associated regulations lost their legal effect, though they were not removed from the Code of Federal Regulations (CFR). Under this proposed rule, NMFS proposes to remove regulatory provisions at § 679.20 that implemented the vacated Amendment 113 and add provisions applicable to the PCTC Program.

Despite having a small local CV fleet, Adak has a substantial degree of historical engagement in the AI Pacific cod fishery. Adak is home to a large shoreplant, and, when operational, the Adak shoreplant primarily receives and processes Pacific cod harvested in the A season. In some years, the facility has not received any deliveries of groundfish, crab, or halibut due to a variety of operational and logistical challenges, as well as changes in fishery management. Section 2.8.6 of the Analysis provides additional detail on Adak shoreplant processing operations (see **ADDRESSES**).

A. Rationale for Establishing an AI CQ Set-Aside

This proposed rule is intended to provide benefits to harvesters delivering to an Aleutian Island shoreplant, the shoreplants, and the communities where those shoreplants are located. This objective is consistent with long-standing policies recommended by the Council and regulations established by NMFS to provide harvesting and processing opportunities for communities in the AI. The Council determined and NMFS agrees that a harvest set-aside is needed for several reasons. First, the entire BSAI trawl CV Pacific cod apportionment could be harvested in the BS which would mean no cod would be delivered to a community in the AI, jeopardizing the ability of AI communities to continue participating in the fishery. Second, the Council acknowledged that the TAC for AI Pacific cod was significantly lower than predicted in the last few years, meaning that the small vessels operating in and around the AI could have reduced harvest opportunities in any given year. Third, the rationalization programs, and particularly the Amendment 80 Program, allowed an influx of at-sea processing capacity into the AI Pacific cod fishery (until at-sea processing was limited by Amendment 120 to the BSAI FMP), exacerbating the need for Council action to support shoreside delivery of Pacific cod to AI fishing communities. This proposed rule would strike a balance between supporting fishery-dependent communities and ensuring that the fishery sectors have a meaningful opportunity to fully harvest their allocations by including several measures to prevent AI Pacific cod from going unharvested. This proposed rule would provide benefits and stability to fishery-dependent fishing communities in the AI when their shoreplants are operating and is responsive to lingering effects caused by changes in management regimes such as rationalization programs.

The Council recognized that neither of the existing Aleutian Island shoreplants—in Adak and Atka—have participated in the AI Pacific cod fishery in recent years. However, the Council also recognized that the measures and CQ set-aside in this proposed rule would minimize the risk that AI harvesters, processors, and communities would be excluded from the AI Pacific cod fishery and would maintain opportunities for them to participate.

This proposed rule would revise regulations to provide additional incentives for harvesters to deliver AI Pacific cod to an Aleutian Island shoreplant. The AI Pacific cod TAC is not sufficient to allow all sectors to prosecute the AI Pacific cod fishery at their historical levels. Without the management measures included in this proposed rule, AI harvesters, shoreplants, and fishing communities could be preempted from the fishery by the offshore sector. The CQ set-aside would be especially beneficial to AI communities in low TAC years when harvest could otherwise fully occur in the BS, preventing any cod deliveries in the AI. The Council emphasized that this proposed rule would not affect any sector's BSAI Pacific cod allocation or the CDQ Pacific cod allocation in the AI. Non-CDQ sectors would continue to receive the allocations established under Amendment 85.

B. Establishing a Set-Aside for AI Processors

The Council recommended, and NMFS proposes establishing a set-aside provision for AI processors that would require cooperatives to set-aside an amount of annual CQ for delivery to an Aleutian Island shoreplant if the city of Adak or Atka files a notice of intent to process that year. The amount of the AI set-aside would be specified each year during the annual harvest specifications process. The amount of the AI set-aside would be equal to the lesser of either the AI Pacific cod non-CDQ DFA or 12 percent of the combined BSAI PCTC

Program A season CQ. The AI Pacific cod non-CDQ DFA is further described below in section V.D of this preamble.

In administering the CQ set-aside, cooperatives would need to ensure that CVs under 60 feet in length assigned to an LLP license with a transferable AI endorsement have an opportunity to harvest at least 10 percent of the set-aside. The AI CQ set-aside would be in effect during the A and B seasons unless the intent to process is withdrawn by the AI community. If the intent to process is withdrawn, any remaining portion of the AI CQ set-aside would be available for cooperatives to harvest and deliver to any processor. Each year, a representative of the cooperatives must submit an inter-cooperative agreement to NMFS that describes (1) how the CQ set-aside would be administered by the cooperatives, (2) how the cooperatives intend to harvest the set-aside, and (3) how cooperatives would ensure that CVs less than 60 feet in length assigned to an LLP license with a transferable AI trawl endorsement have the opportunity to harvest 10 percent of the AI CQ set-aside for delivery to an Aleutian Island shoreplant. All cooperatives would be required to provide the cooperative's plan for coordinating harvest and delivery of the set-aside to an Aleutian Island shoreplant in the annual cooperative application, regardless of whether a cooperative intends to harvest any amount of the CQ set-aside.

The purpose of the inter-cooperative agreement would be to ensure annual coordination between the PCTC Program cooperatives and shoreplants that are operating in the AI and to guarantee that the AI CQ set-aside is available to be harvested in the AI. This reduces the management burden on NMFS and relies on the cooperatives to organize the annual fishing activity.

The 12 percent CQ set-aside is based on historical use by the Aleutian Island shoreplants. The Council did not recommend an allocation to the Aleutian Island shoreplants based, in part, on concerns about whether the plants would be in operation every year and their ability to lease CQ, which was not the intent of the Council in providing processing opportunities for the AI communities. A specific objective is to provide an opportunity for AI cod harvests to support a shoreplant that could be used in conjunction with other fishery landings and allocations to benefit AI communities. The Council determined that this AI CQ set-aside option best met their objective to support sustained AI community participation in the Pacific cod trawl CV fishery. The performance of this set-aside program will be evaluated in the periodic program reviews.

The Council also noted that Aleutian Island shoreplants have a different history in the fishery than the non-Aleutian Island shoreplants, and, therefore, a different management structure is appropriate. Because there is currently no Aleutian Island shoreplant with an active FPP, no entity in the AI would be eligible for processor-issued QS. Unlike with the BS processors, QS allocations to AI processors would not work well based on the intermittent and impermanent operation of the Aleutian Island shoreplants. For this reason, the PCTC Program would provide benefits to Aleutian Island shoreplants through an AI CQ set-aside rather than by allocating QS to AI processors.

C. Intent To Process and Eligibility for AI Set-Aside

This proposed rule would require annual notification of intent to process PCTC Program Pacific cod in the upcoming fishing year by a representative of the City of Adak or the City of Atka. A signed letter or memorandum would serve as the official notification of intent. This proposed rule would require that the official notification of intent be submitted to the NMFS Regional Administrator no later than October 15 of the year prior to fishing. Email submission of an electronic copy of the official notification of intent by October 15 would provide NMFS inseason management with the timely information it needs to manage the upcoming fisheries and notify the cooperatives that the AI set-aside is in effect for the upcoming year.

A city's notification of intent to process PCTC Program Pacific cod would be required to contain the following information: date, name of city, a statement of intent to process AI Pacific cod, statement of calendar year during which the city intends to process AI Pacific cod, and the contact information for the city representative where the shoreplant is intending to process AI Pacific cod. If no notice of intent to process is submitted, cooperatives would not be required to set aside CQ for Aleutian Island shoreplant delivery.

On or before November 30, the Regional Administrator would notify the representative of the City of Adak or the City of Atka confirming receipt of their official notification of intent to process PCTC Program Pacific cod. Shortly after receipt of an official notification of intent to process PCTC Program Pacific cod, NMFS would announce through notice in the **Federal Register** whether the AI set-aside will be in effect for the upcoming fishing year.

Even if an AI community is uncertain at the time the notice of intent is due as to whether an Aleutian Island shoreplant will be operational, there would be no penalty to the AI community or shoreplant for stating their intention to process but then later withdrawing that notice of intent. An AI city would be allowed to withdraw their notice of intent at any time after submitting it to NMFS.

NMFS would monitor the implementation of the set-aside throughout the A and B seasons. NMFS would consider the number and frequency of deliveries to Aleutian Island shoreside processors as well as the season timing and remaining CQ to be harvested. As soon as practicable, if the Regional Administrator determines that Aleutian Island shoreplants authorized under the PCTC Program will not process the entire AI set-aside, the Regional Administrator could remove the delivery requirement for some or all of the projected unused AI CQ set-aside. The unused portion of the AI CQ set-aside would be made available to PCTC cooperatives in proportion to the amount of CQ that each PCTC cooperative received in the initial allocation of CQ for that calendar year by inseason notification published in the **Federal Register**.

If Adak and/or Atka withdraws its notice of intent to operate during the A or B season, any remaining portion of the AI CQ set-aside would be released to the cooperatives for delivery to any shoreside processor or an eligible C/P with a Pacific cod mothership endorsement.

D. AI DFA

The Council recommended, and NMFS proposes that the amount of the CQ set-aside for delivery to an Aleutian Island shoreplant would be equal to the lesser of either the AI Pacific cod non-CDQ DFA or 12 percent of the A season CQ and would be in effect during the A and B seasons. The Council and NMFS annually establish separate OFLs, ABCs, and TACs, for the AI and BS subareas; however, the non-CDQ sector allocations (including the PCTC Program allocations) remain BSAI-wide allocations. When this CQ AI set-aside is equal to the AI DFA, directed fishing for Pacific cod in the AI may be conducted only by PCTC Program vessels that deliver their catch of AI Pacific cod to Aleutian Island shoreplants. However, if the AI DFA is greater than the AI CQ set-aside (and thus the set-aside is equal to 12 percent

of the A season CQ), the difference between the AI DFA and the AI CQ set-aside may be available for directed fishing by all non-CDQ fishery sectors with sufficient A season allocations and may be processed by any eligible processor.

This proposed rule would require that NMFS annually specify an ICA and a DFA derived from the Aleutian Islands non-CDQ TAC. Each year, during the annual harvest specifications process described at § 679.20(c), NMFS would specify an amount of AI Pacific cod that NMFS estimates will be taken as incidental catch when directed fishing for non-CDQ groundfish other than Pacific cod in the AI subarea. This amount would be the AI ICA and would be deducted from the AI non-CDQ TAC. The amount of the AI non-CDQ TAC remaining after subtraction of the AI ICA would be the AI DFA.

NMFS would specify the AI ICA and DFA so that NMFS could clearly establish amount of AI CQ set-aside. It would also aid the public in knowing how much of the AI non-CDQ TAC is available for directed fishing prior to the start of fishing to aid in the planning of fishery operations.

The amount of the AI ICA may vary from year to year, and in future years, NMFS would specify the AI ICA in the annual harvest specifications based on recent and anticipated incidental catch of AI Pacific cod in other AI non-CDQ directed groundfish fisheries.

VI. BSAI Pacific Cod CV C Season Fishery

A. Management of the Limited Access Fishery

As stated above, the PCTC Program would allocate only A and B season trawl CV sector apportionments to cooperatives as CQ. The C season apportionment—which is 15 percent of the total annual allocation to the BSAI Pacific cod trawl CV sector—would remain a limited access fishery open to all trawl CVs with LLP license endorsements to harvest Pacific cod in the BS and/or AI with trawl gear. The C season limited access fishery would be managed as it is under status quo conditions, including management of incidental catches of Pacific cod in other directed fisheries. This means that, as under status quo conditions, any trawl CV with a Pacific cod endorsement and BS and/or AI area endorsements is eligible to fish in the C season until the TAC is reached.

B. ITAC and PSC Assigned to the Limited Access Fishery

Although directed fishing for Pacific cod in the C season (June to November) is an important part of the annual fishing plan for some trawl CVs, most of the trawl CV C season catch is incidental to other directed fishing. In August, before directed fishing opens on September 1 for the hook-and-line and pot sectors, NMFS estimates any BSAI trawl CV C season allocation would be available for reallocation to other sectors. In some years, it is clear that a portion of the trawl CV TAC will be available to reallocate, and NMFS may effectuate a reallocation in late September or October. In other years, it is less clear whether there will be any surplus TAC, and NMFS waits until after directed fishing for pollock and Pacific cod by the trawl CV sector closes. In that circumstance, reallocations would occur in November or December. When the BS and AI Pacific cod TACs are higher, trawl CV C season Pacific cod may go unused and can be reallocated to other sectors. In some years, other trawl CV fisheries may be done for the year by October and would not be considered for Pacific cod reallocations.

To help ensure efficient allocation management, NMFS may rollover any unused portion of a seasonal apportionment from any non-CDQ fishery sector (except the jig sector) to that sector's next season during the current fishing year (§ 679.20(a)(7)(iv)(B) and (C)).

Under the PCTC Program, the cooperatives would be granted harvest privileges in the A and B seasons of the BSAI Pacific cod fishery. Those harvest privileges would alter the reallocation structure from the trawl CV sector prior to the C season since roll-overs of unused PCTC CQ to other sectors would not occur until the close of the annual PCTC fishing year (the end of the B season). This proposed rule would establish a separate C season halibut and crab PSC apportionment of five percent before reducing the A and B season PSC limits as described above.

VII. Ownership and Use Caps

A. LAPPs and Use Caps

Section 303A(c)(5)(D) of the Magnuson-Stevens Act requires the Council to ensure that Program participants do not acquire an excessive share of the total limited access privileges in the program by (1) Establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and (2) Establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges.

The Council considered how the allocation of QS could result in consolidation in the harvesting and processing sectors, and whether consolidation could result in any participant acquiring an excessive share of the limited access privileges. To prevent excessive consolidation and any issues with excessive shares, the Program would implement ownership caps to limit the amount of QS a person could hold and use caps on the amount of CQ they could use. There are four types of ownership or use caps under the PCTC Program that would apply to harvesters and processors.

Ownership and use caps are typically implemented to limit consolidation and prevent a person, vessel, or processing facility from harvesting, processing, or controlling an excessive amount of the LAPP shares. Here, the proposed ownership and use caps would limit consolidation of both harvesters and processors in the BSAI trawl CV sector, and this is described further in section 2.9.8 of the Analysis. In development of previous catch share programs, the Council tried to balance the goals of improving economic efficiency, maintaining employment opportunities for crew, and providing financially affordable access opportunities for new participants.

Individual ownership and use caps for both CVs and processors would be calculated using the ''individual and collective rule.'' The individual and collective rule means a person is deemed to own or use QS or CQ in the same percentage that person owns or uses the relevant license, permit, or vessel. For example, persons that hold 100 percent of an eligible LLP license or processing permit would be assigned 100 percent of the QS assigned to that LLP license towards their ownership cap. If they hold 50 percent of the license, they are credited with holding 50 percent of the QS assigned to that LLP license. The same logic applies to use caps: if a person owned 50 percent of a trawl CV, they would be credited with using 50 percent of the CQ harvested by that CV in calculating the use caps. If a person owns QS equal to the maximum shares cap, that person would not be allowed to acquire any additional QS. The proposed ownership and use caps of 5 percent for harvesters and 20 percent for processors are well below what the Council would consider an excessive share because such ownership amounts would preserve

price competition and would not result in any participant wielding improper market power. Because the proposed program caps fall well short of excessive shares, the Council recommended and NMFS proposes granting legacy exemptions to participants whose initial allocations based on historical participation would otherwise exceed the ownership and use caps. The legacy exemptions are intended to preserve stability in the fishery rather than force longtime participants to divest and reduce their reliance on the fishery. However, legacy exemptions are unique to persons receiving initial allocations and could not be transferred. All future purchasers of QS would be subject to the ownership and use caps described below.

B. QS Ownership Caps

1. Harvester QS Ownership Cap—5 Percent

With the exception of persons qualifying for the proposed legacy exemption, no person would be permitted to individually or collectively own more than 5 percent of the aggregate PCTC Program QS units initially assigned to eligible LLP licenses. The number of PCTC Program QS units would be based on the PCTC Program official record. Section II of this preamble provides a detailed example of how the PCTC Program initial QS pool would be established. Persons over the cap at the time of QS issuance would be granted legacy exemptions. However, when QS is transferred, the person receiving the transfer would be prohibited from holding or using QS over the 5 percent cap. Processor-issued QS would not count toward this use cap. This QS ownership cap would limit the amount of PCTC QS assigned to an LLP license that could be held or controlled by a single entity.

2. Processor QS Ownership Cap—20 Percent

With the exception of persons qualifying for the proposed legacy exemption, no person would be permitted to individually or collectively own more than 20 percent of the aggregate PCTC QS units initially assigned to PCTC Program QS permits held by eligible processors. This proposed rule defines processor-issued QS caps that limit the percent of that class of shares a person could hold or use. Processor-held QS ownership caps are necessarily higher than harvester-held QS caps because the total number of eligible processors is significantly less than the number of harvesters. This cap would be applied at the aggregate firm level (not the individual facility level). Persons over the cap at the time of QS issuance would be granted non-transferable legacy exemptions. The processor QS ownership cap would limit the amount of processor held PCTC QS that could be held or controlled by a single entity.

C. Vessel CQ Use Cap—5 Percent

Most of the cooperative programs in the North Pacific include a vessel harvesting or use cap. A vessel use cap restricts the quota that can be consolidated and harvested on one vessel during the year.

The Program would include a 5 percent vessel use cap on PCTC Program harvesting vessels. With the exception of persons qualifying under the proposed legacy exemption, no vessel would be permitted to harvest more than 5 percent of the annual PCTC CQ issued in the fishery. Vessels over the cap at the time of QS issuance would be granted legacy exemptions. The legacy exemption would apply to the vessel designated on an LLP license that yields more than 5 percent of the annual Pacific cod CQ at the time of initial allocation. This legacy exemption is not transferable if the LLP license is transferred to a new owner. The vessel use cap would limit the amount of PCTC CQ that could be harvested by a single vessel.

D. Processor CQ Use Cap—20 Percent

A processor's CQ use cap would protect against excessive consolidation of processing activity by limiting a person (*i.e.* company or firm) from processing more than 20 percent of the annual PCTC CQ, with the exception of persons qualifying under the proposed legacy exemption. The processor CQ use cap would be calculated based on use of all CQ issued under the PCTC Program and not just QS initially issued to processors. This would ensure that a processing company would be limited to processing a specific percentage of the PCTC Program allocation. If the cap was set at the facility level, as was considered by the Council, there would have been no processing limit if a firm operated enough plants.

Under this proposed rule, no person may process more than 20 percent of the PCTC CQ using the individual and collective rule. A person over the cap at the time of QS issuance would be granted a non-transferable legacy exemption. The processor CQ use cap would limit the amount of PCTC CQ that could be processed by a single person.

E. Transfer Limitations

1. QS Transfer Limitations

Under the PCTC Program, LLP license holders that receive QS may transfer PCTC QS concurrently with the transfer of the LLP license or AI endorsement to which it is attached. Initially-issued QS is attached to LLP licenses and QS is non-severable from the LLP license in most cases. However, for LLP licenses with transferable AI endorsements, QS is instead non-severable from the AI endorsement and would move with the AI endorsement if sold to the holder of another LLP license eligible for the transferable AI endorsement. Transfer of an LLP license or AI endorsement results in the transfer of any PCTC Program eligibility and QS associated with the LLP license or transferable AI endorsement. NMFS would not approve transfers of LLP licenses or AI endorsements if the transfer would cause a person to exceed any ownership or use caps. If an LLP license holder qualifies for a legacy exemption from the QS ownership or use caps, NMFS would not approve any transfers of QS to that person unless and until that person's holdings of aggregate PCTC QS are reduced to an amount below the cap.

To transfer an LLP license or an AI endorsement with PCTC Program QS, the LLP license holder must fill out an application for the transfer of an LLP groundfish or crab license, or for the transfer of an AI endorsement. In the application, the transferor must specify the amount of QS to be transferred (generally all QS attached to the license) the transferee, and the price for the QS transfer. As stated above, NMFS will consider any ownership or use cap implications in reviewing transfer applications. In addition, the QS price will be used in aggregate during program reviews.

For processor-held QS, the QS also is non-severable from the permit unless the transfer would cause a transferee to exceed any holding or use caps. If a processor qualifies for a legacy exemption from the QS holding or use caps, NMFS would not approve any PCTC Program QS permit transfers to that person unless and until that person's holdings of aggregate PCTC QS are reduced to an amount below the QS use cap. A PCTC QS permit issued with a legacy exemption with an amount of PCTC QS above the QS ownership cap may be transferred, and any QS above the ownership cap would be severed from the PCTC QS permit at the time of transfer. Any PCTC QS severed from a PCTC QS permit at the time of transfer may be transferred to another eligible processor permit or used to create a new

PCTC QS permit to be issued to an eligible shoreside processor that holds an FPP. If a processor allows their FPP to expire, they would no longer be eligible to use their QS, but they could still transfer their QS permit.

To transfer QS held by a processor, the processor must fill out an application to transfer QS. In the application, the transferee must specify the amount of QS to be transferred (generally all QS on the permit), which processors are receiving it, and the price for the QS transfer. NMFS will consider whether a transfer implicates any ownership or use caps in reviewing applications. In addition, the QS price will be used in aggregate during program reviews.

2. CQ Transfer Limitations

In addition to permanent transfers of QS, CQ may also be transferred during the fishing season. Annual CQ and associated PSC are transferable between cooperatives through eFish, which automatically reviews transfers and approves them if they remain below specified use caps. Transfers of CQ would be for a single year's annual allocation. The underlying QS remains with the LLP license.

This proposed rule would allow post-delivery transfers of CQ, but they must be completed prior to August 1, after the close of the B season. The intent of this provision is to improve cooperative flexibility, reduce potential violations from overages, reduce enforcement costs, and allow more complete harvests of each cooperative's allocation. At the end of the fishing season, remaining CQ may be consolidated into fewer cooperatives (and for harvest by fewer vessels) due to the requirement that a vessel may not begin a fishing trip without unharvested CQ. Allocations will likely be consolidated in one or two cooperatives with harvesters in those cooperatives making ''sweep up'' trips to complete the season's harvests. Although consolidation of allocations in one or two cooperatives may help avoid overages, it is anticipated that unintentional small overages could still occur.

Additional PCTC Program Provisions

A. Sideboard Limits in the PCTC Program

Sideboard limits are restrictions placed on holders of quota share in rationalized fisheries that prevent them from taking advantage of the benefits of consolidation to expand their operations into other fisheries. PCTC Program sideboard limits would be intended to prevent holders of QS from expanding their fishing effort in GOA fisheries. Sideboard limits would allow cooperative members to catch up to the historical percentage of species they harvested in non-rationalized GOA groundfish fisheries. Sideboard limits are not an allocation. Rather, the sideboard is a limit on the catch of species that are not allocated as QS. The PCTC Program is designed to provide certain economic advantages to participants, which could be used to increase their participation in other fisheries and adversely affect GOA fishery participants by increasing competition in limited access fisheries. PCTC Program participants would not be guaranteed any sideboard limit as an amount of catch but instead could participate in the specified directed fishery until the PCTC program CVs in the aggregate hit the relevant species sideboard limit or TAC is closed to directed fishing, whichever happens first. To limit the participation of PCTC Program QS holders in other fisheries, the Program would add sideboard limits for GOA non-exempt AFA CVs and AFA LLP licenses and restrict vessels that are exempt from GOA sideboard limits from leasing CQ within the cooperative.

The PCTC Program would modify existing GOA sideboard limits and associated GOA halibut PSC limits for non-exempt AFA vessels and LLP license holders, close directed fishing where sideboard limits are too small to support a directed fishery, and require that PCTC Program cooperatives monitor and report on leasing activity for vessels that are not subject to GOA sideboards. Most vessels that are exempt from the GOA sideboard limits would be prohibited from leasing their CQ under the program as a condition of benefitting from that exemption, with one exception: AFA GOA-exempt CVs, non-AFA CVs, and CVs assigned to under 60' LLP licenses with transferable AI endorsements with less than 300 mt of average annual qualifying catch history would be permitted to lease their CQ.

Existing GOA Sideboard Limits for Non-Exempt AFA CVs and LLP Licenses

In the GOA, AFA CVs are divided into two categories: vessels subject to sideboard limits and vessels exempt from sideboard limits. The limits are currently calculated based on the catch histories of the non-exempt AFA CVs. Specifically, the sideboard ratio is aggregated retained catch for each groundfish species or species group from 1995 through 1997 period relative to the sum of the TACs for the species or species group. Through an inter-cooperative agreement, AFA cooperatives currently divide the sideboard limits among the cooperatives and set penalties for exceeding the limits.

AFA CVs that had a historical dependence on GOA fisheries and limited history in the BSAI pollock fishery benefit from an exemption to the GOA sideboard limits. The Council recommended an exemption to GOA sideboard limits for AFA vessels to be managed by the cooperatives with the understanding that no GOA sideboard-exempt vessel would lease its BS pollock in a year that it exceeds its GOA average harvest level from 1995 through 1997. This exception is implemented through the AFA CV Inter-Cooperative Agreement which binds vessels to this limitation.

The AFA fleet includes two classes of sideboard-exempt CVs: (1) those exempt from sideboard limits in the BSAI Pacific cod fishery, and (2) those exempt from sideboard limits in the GOA groundfish fisheries.

NMFS manages the AFA sideboard limits. The agency makes an initial determination at the beginning of the fishing year regarding the fisheries in which AFA vessels are likely to participate, based on historical participation (sideboard ratios), TACs, PSC limits, and other apportionments and regulations. The sideboard limit to TAC ratio remains the same year-to-year but is applied to the current year's initial total allowable catch (ITAC) to determine the yearly sideboard limit (see Table 2–121 of the Analysis).

To streamline and simplify NMFS's management of AFA groundfish sideboard limits, regulations currently prohibit directed fishing for numerous BSAI and GOA species with historically small sideboards (84 FR 2723, February 8, 2019); (50 CFR 679.20(d)(1)(iv)(D) and 50 CFR 680.22(e)(1)(i) and (iii) and Tables 54, 55, and 56 to 50 CFR 679). See Section 2.9.4 of the Analysis for the 2021 non-exempt AFA CV groundfish sideboard limits in the GOA and for the non-exempt AFA CVs halibut PSC limits in the GOA (see **ADDRESSES**). Section 2.9.4 provides a list of the GOA groundfish species that are closed to directed fishing by AFA CVs. However, AFA CVs qualified for the CGOA Rockfish Program with Rockfish Program QS would not be restricted by AFA sideboard limits for primary and secondary Rockfish Program species while participating in the Rockfish Program.

The current GOA halibut PSC limit for non-exempt AFA CVs is calculated based on the retained groundfish catch by AFA sideboarded CVs in the shallow-water and deep-water complex

from 1995 through 1997 relative to total retained catch in the shallow-water and deep-water complex by all vessels. Under the GOA halibut PSC limits, fisheries in the applicable complex are closed for the remainder of a season once NMFS determines that the PSC limit will be reached. Any unused GOA halibut PSC in one season is added to the next season. Conversely, if a seasonal apportionment of a trawl halibut PSC limit is exceeded, the overage is deducted from the apportionment for the next season during the current fishing year.

Changes to Existing GOA Sideboard Limits

Under the PCTC program, all GOA non-exempt AFA CVs and associated AFA LLP licenses would be sideboarded in aggregate for all GOA groundfish fishing activity and for GOA halibut PSC, except for vessels when participating in the CGOA Rockfish Program, based on their GOA catch history during the qualifying period. The existing sideboards are applied to non-exempt AFA vessels as defined at § 679.64(b)(2). The PCTC Program would modify the calculation of the existing sideboard limits for these non-exempt AFA CVs, based on the GOA catch history. LLP licenses associated with non-exempt AFA CVs upon implementation of the PCTC Program would also be subject to the revised sideboard limits regardless of which vessel is named on the LLP.

Sideboards are currently calculated for non-exempt AFA CVs based on the ratio of catch to the TAC during the years 1995–1997. The PCTC Program modifies the calculation of the sideboard ratios for non-exempt AFA CVs that would be used in the annual GOA harvest specifications, looking at the ratio of catch to the TAC in the qualifying years of 2009–2019 (as shown in Table 3).

Table 3–GOA groundfish sideboard ratios (aggregate retained catch/TAC) for all non-exempt AFA CVs and LLP licenses based on the PCTC Program qualifying period

Target Species	Apportionments by season/gear	Area/component	Existing Sideboard Ratio	New Sideboard Ratio
Pollock	A Season Jan 20 - May 31	Shumagin (610)	0.6047	0.057
		Chirikof (620)	0.1167	0.064
		Kodiak (630)	0.2028	0.091
	B Season Sep 1 - Nov 1	Shumagin (610)	0.6047	0.057
		Chirikof (620)	0.1167	0.064
		Kodiak (630)	0.2028	0.091
	Annual	WYK (640)	0.3495	0.026
		SEO (650)	0.3495	0.000
Pacific cod	A Season Jan 1 - Jun 10	W	0.1331	0.009
		C	0.0692	0.011
	B Season Sept 1 - Dec 31	W	0.1331	0.009
		C	0.0692	0.011
Shallow-water flatfish	Annual	W	0.0156	0.000
		C	0.0587	0.011
Deep-water flatfish	Annual	C	0.0647	0.002
		E	0.0128	0.000
Rex sole	Annual	C	0.0384	0.014
Arrowtooth flounder	Annual	C	0.028	0.011
Flathead sole	Annual	C	0.0213	0.007
Pacific ocean perch	Annual	E	0.0466	0.001

In addition, the ratio used to apportion GOA halibut PSC limits would be modified and the five seasonal apportionments based on that sideboard ratio would be reduced to a single aggregate amount. Providing an aggregate halibut PSC limit would provide greater flexibility for the AFA vessels and LLPs to assign halibut PSC limits to those GOA groundfish sideboard fisheries that have the greatest value. Table 4 shows the new aggregate GOA halibut PSC limit ratio based on the catch history during the qualifying period 2009–2019 that would be used instead of the information currently in the GOA harvest specifications table after the PCTC Program is implemented.

TABLE 4—NEW GOA HALIBUT PSC LIMIT RATIO AGGREGATED AT THE SEASON AND COMPLEX LEVEL FOR ALL AFA NON-EXEMPT CVS AND ASSOCIATED LLP LICENSES UNDER THE QUALIFYING PERIOD

GOA halibut PSC limit	Qualifying period (2009–2019)
PSC Limit Ratio	.072

Additionally, the Council recommended and NMFS proposes to

close directed fishing to all GOA non-exempt AFA CVs and LLP licenses for the following species categories: Southeast Outside district of the Eastern GOA pollock, Western GOA shallow-water flatfish, Central and Eastern GOA deep-water flatfish, and Eastern GOA Pacific ocean perch. NMFS will no longer publish AFA Program sideboard limits for these specific species or species groups in the **Federal Register** as part of the annual groundfish harvest specifications but instead will specify in regulation that directed fishing for these species is closed to non-exempt AFA CVs.

AFA GOA-exempt CVs, non-AFA CVs, and CVs assigned to under 60 ft LOA LLP licenses with transferable AI endorsements that receive PCTC Program QS would not be permitted to lease the CQ generated by their LLP license as a condition of benefiting from a GOA sideboard exemption. If the GOA-exempt vessel assigned to the LLP license does not fish in any GOA fishery, except the CGOA Rockfish Program, during the calendar year, the BSAI Pacific cod CQ generated by the LLP license can be leased that calendar year. Cooperatives would be required to monitor CQ leasing activity by AFA GOA-exempt CVs, and non-AFA CVs, and CVs assigned to under 60 ft LOA LLP licenses with transferable AI endorsements and implement a penalty structure for violations. Cooperatives would report leasing activities and penalties issued in the voluntary cooperative annual report and in their annual cooperative application. AFA GOA-exempt CVs, non-AFA CVs, and CVs assigned to under 60 ft LOA LLP licenses with transferable AI endorsements with less than 300 mt of average annual qualifying BSAI Pacific cod history may lease their BSAI Pacific cod CQ and still benefit from the GOA sideboard exemption.

Changes to Existing BSAI Sideboard Limits for AFA CVs

The BSAI Pacific cod and halibut PSC sideboard limits for AFA trawl CVs specified at 679.64(b)(4)(i) and in Table 40 to part 679 would be removed upon implementation of this Program. The BSAI Pacific cod sideboard limit would no longer be necessary because BSAI Pacific cod catch in the A and B seasons would be fully allocated under the PCTC Program. NMFS proposes removing the halibut PSC sideboard limits for AFA trawl CVs because the PCTC Program would establish lower PSC limits for PCTC Program participants. The BSAI crab PSC sideboard limit for AFA trawl CVs specified at § 679.64(b)(4)(i) and Table 41 to part 679 would remain unchanged by this proposed rule. Table 41 also establishes crab PSC sideboard limits for the AFA CV and AFA C/Ps, and the PCTC Program would not change these overall limits.

B. At-Sea Processing Sideboard Limit

The Council recommended and NMFS proposes a sideboard limit on the amount of CQ that could be delivered by trawl CVs to a C/P designated on a groundfish LLP license with a BSAI Pacific cod trawl mothership endorsement. This sideboard limit would be assigned to the LLP license with a BSAI Pacific cod trawl mothership endorsement that authorizes the C/P to act as a mothership in the BSAI Pacific cod fishery. The Council recommended that each eligible C/P acting as a mothership could process up to the higher of (1) 125 percent of the eligible C/P's processing history during the qualifying years (with no drop year) or (2) the history from LLP licenses that are owned (in excess of 75 percent) directly or indirectly by the owner of a C/P LLP license eligible for the offshore sector of the target non-CDQ BSAI Pacific cod trawl CV fishery (as of December 31, 2019) and not to exceed 125 percent of the eligible CP's processing history. This at-sea processing sideboard limit would be permanently attached to the associated LLP license and would apply to the processing activity of any associated vessel.

The Council recommended and NMFS proposes to establish an at-sea processing sideboard limit greater than the historical average to provide some opportunity for growth relative to the C/Ps historical annual average, though this limit may allow less offshore processing than occurred during some of the qualifying years. The 125 percent limitation was selected as a means to balance the needs of CVs that want to (or in some cases must) deliver offshore, the historical C/P platforms, shoreside processors, and the communities dependent on shoreside landings. The option selected allows two eligible C/Ps acting as a mothership to process up to 125 percent of their individual average processing history over the qualifying period but does not allow the firms to drop a year when calculating the limit. Due to confidentiality constraints, NMFS cannot publicly release the data used to calculate the limits, or the annual limits, that will apply to each of the two qualifying LLP licenses authorizing a C/P to operate as a mothership in this fishery. Because the amount is a limit and not an allocation, the PCTC Program does not require that this amount be delivered to C/Ps, but it provides an upper bound on how much may be delivered.

This is consistent with the Council's intent under BSAI FMP Amendment 120 (84 FR 70064, December 20, 2019), where it restricted the number of C/Ps that are eligible to operate as a mothership receiving and processing Pacific cod from CVs in the BSAI non-CDQ Pacific cod directed fishery using trawl gear. Under Amendment 120, the Council and NMFS issued a BSAI Pacific cod trawl mothership endorsement to two LLP licenses but did not include a limit on the amount of BSAI Pacific cod that could be processed because it was not thought that any one processor could increase their capacity significantly under the LLP management system. However, under a rationalized, slower paced, cooperative fishing scenario that is proposed under this Program, the Council and NMFS determined it would be possible for continued mothership processing growth beyond historical patterns, so the Council recommended that a processing limit be established for each LLP listed in Table 57 to part 679. For more information on processing limits for the mothership sector, please see section 2.9.5 of the Analysis (see **ADDRESSES**).

NMFS would calculate the at-sea processing sideboard limit, expressed as a percentage of the aggregate PCTC annual CQ that would apply to each LLP license with a BSAI Pacific cod trawl mothership endorsement and notify the LLP holder upon issuance of initial allocations. Each year upon issuance of CQ, this processing sideboard limit would be calculated for each applicable LLP. This proposed rule would not change the regulations pertaining to the transfer of LLP licenses as specified at § 679.4(k)(7) nor the process to change the designated vessel on an LLP as specified at § 679.4(k)(7)(vii). Each LLP subject to this at-sea processing sideboard limit would be prohibited from exceeding the processing limit as specified in proposed regulations below.

Due to confidentiality requirements, the amount of the processing limit would not be made public and the LLP holder would be responsible for coordinating with any PCTC Program cooperative to ensure the applicable processing limit is not exceeded.

To facilitate accurate accounting of PCTC catch delivered to a mothership and assign the catch delivered to a mothership in unsorted codends to the correct management program, NMFS proposes adding a new paragraph to the maximum retainable amount (MRA)

regulations at § 679.20. This change will allow NMFS to assign each codend or ''haul'' delivered to a mothership to the appropriate fishery management program based on the retained catch composition of the haul. Any unsorted codend delivered to a mothership during the applicable PCTC season that is in the Pacific cod target fishery would be considered PCTC CQ and resulting PSC use will be deducted from the appropriate cooperative CQ and PSC limits. For any haul that is not in the Pacific cod target, the catch of Pacific cod would be deducted from the appropriate seasonal ICA and resulting PSC fishery category as established in the annual harvest specification process.

C. Cost Recovery

The PCTC Program would be a LAPP established under the provisions of Section 303A of the Magnuson-Stevens Act. The Magnuson-Stevens Act requires that NMFS collect fees from limited access privilege holders to cover the actual costs of management, data collection and analysis, and enforcement activities associated with LAPPs. Cost recovery fees may not exceed three percent of the ex-vessel value of the fish harvested under the LAPP. NMFS would assess a fee on the ex-vessel value of PCTC Program Pacific cod harvested by cooperatives in the BSAI. Halibut and crab PSC would not be subject to a cost recovery fee because PSC cannot be retained for sale and, therefore, does not have an ex-vessel value.

Collecting fees for the PCTC Program would require determining CQ ex-vessel value, assessing management costs, billing the appropriate fee to each cooperative, and ensuring that cooperatives comply with the fee collection requirements.

NMFS would rely on the existing BSAI Pacific cod Ex-vessel Volume and Value Report to provide information on the ex-vessel value of Pacific cod for the PCTC Program. Pacific Cod Ex-Vessel Volume and Value reports are a component of existing groundfish cost recovery programs, such as the Amendment 80 Program. A shoreside processor designated on an FPP, or a mothership designated on an FFP, that processes landings of either CDQ Pacific cod or BSAI Pacific cod harvested by a vessel using trawl gear must submit annually to NMFS a complete Pacific Cod Ex-vessel Volume and Value Report, as described at paragraph § 679.5(u)(1), for each reporting period for which the shoreside processor or mothership receives this Pacific cod. Each shoreside processor that would receive Pacific cod harvested under a PCTC CQ permit is already required to submit this report to NMFS no later than November 10 of each year pursuant to § 679.5(u)(1)(iii). This report would allow NMFS to collect price data from the PCTC Program season which extends from January through June of each year and generate a standard ex-vessel price for Pacific cod and determine the average price paid per pound for all shoreside processors receiving CQ. NMFS publishes the applicable Pacific cod standard ex-vessel prices and fee percentage in the **Federal Register** following the end of the B season fishery in the year the landings were made, which would provide cooperatives with information necessary to assess their fee liability.

NMFS would publish the Pacific cod fee percentage in the **Federal Register** that would determine the total fee, up to three percent of the total ex-vessel value of the fishery, required from all cooperatives based on landings of CQ made in the previous year. The fee percentage is the total percentage of ex-vessel value due for each pound of CQ made by a cooperative during the previous year. The amount due to NMFS is based on the standard ex-vessel value of the CQ debited from all PCTC Program CQ accounts relative to the actual costs directly related to the management, enforcement and data collection of the PCTC Program.

NMFS would determine the fee percentage that applies to landings made in the current calendar year by dividing the total value of Pacific cod for all cooperatives made during the current year by the total actual costs during the previous fiscal year. NMFS would capture the actual cost of managing the fishery through an established accounting system that allows staff to track labor, travel, and procurement. Once the actual costs for the previous fiscal year are identified, that amount is recovered from all CQ holders in the fishery. If a three-percent fee would recover revenues in excess of those needed, the percentage will be set at less than three percent. The fee percentage could not be set at an amount higher than three percent of ex-vessel value even if the actual costs for the previous year exceeded three percent of the standard ex-vessel value for the PCTC Program CQ landings.

NMFS would inform each cooperative of the fee percentage applied to the current year's landings and the total amount due (fee liability). NMFS advises cooperatives to inform NMFS if their contact information has changed. This fee liability letter would be sent to cooperative representatives after the fee was incurred (typically in the months following). The fee liability letter would be provided before fees are due on August 31 of each year. The letter would include a summary explaining the fee liability determination including the current fee percentage and details of CQ pounds debited from CQ allocations by permit, date, and prices.

NMFS would require that all payments be submitted electronically in U.S. dollars through the NMFS Alaska Region website. Many of the cooperatives are familiar with, and regularly use, electronic submissions of various forms under other catch share programs, such as the AFA Program, and NMFS would extend this common practice to fee submission for the PCTC Program. Instructions for electronic payment would be made available on the payment website and through a fee liability summary letter NMFS would mail to the CQ permit holder.

The cooperative representative would be responsible for paying cost recovery fees. Failure to pay cost recovery fee liabilities on time would result in NMFS not approving a cooperative's application for a CQ permit the following year until full payment of the fee liability is received by NMFS. This is because a CQ permit may not be issued until NMFS receives a complete application for CQ, which would include confirmation of the full payment of any cost recovery fee liability. Communication with NMFS using the contact information provided in the fee liability letter would provide ample opportunity for CQ permit holders to reconcile accounts. However, if the account is not reconciled and the individual does not pay, NMFS would send an initial administrative decision (IAD) to the CQ permit holder. The IAD would state that the CQ permit holder's estimated fee liability due from the CQ permit holder had not been paid. Any such formal determination may be appealed. The appeals process is described under 50 CFR 679.43. An applicant who appeals an IAD would not receive a new CQ permit until the appeal was resolved in the applicant's favor.

After 30 days, the agency may pursue collection of the unpaid fees if the formal determination is not appealed and the account remains unpaid or under-paid. The Regional Administrator may continue to prohibit issuance of a CQ permit for any subsequent calendar years until NMFS receives the unpaid fees.

The PCTC Program would follow this proposed cost recovery process that builds on existing cost recovery processes in other programs. NMFS would use standard prices derived from

volume and value reports, which are submitted in early November of each year, from the calendar year prior to the landings used to calculate the fee percentage. NMFS would begin tracking PCTC Program management costs in the calendar year 2023 once the rule is in effect. PCTC Program landings would be made in the A and B seasons, which extends from January 20 to June 10.

To illustrate this in an example using the year 2025, the PCTC Program fishing year that would have landings subject to cost recovery would end June 10, 2025. NMFS would use standard prices derived from the volume and value report submitted by November 10, 2024 for landings made in 2024. Finally, NMFS would use the management costs from July, 2024 through June, 2025 to calculate the 2025 fee percentage. By no later than July 31, 2025, the Regional Administrator would publish the standard price and fee percentage in a notice in the **Federal Register** and send invoices to cooperatives.

D. Monitoring Provisions

The Council recommended and NMFS proposes requirements for observer coverage and other monitoring and enforcement provisions under the PCTC Program to ensure that fleet-wide harvests can be effectively monitored and that catches remain within allocations. These requirements include full observer coverage for CVs harvesting PCTC Program CQ (except for CVs delivering unsorted codends to motherships) and requirements for communications equipment to facilitate observer data entry and electronic transmission to NMFS. These monitoring provisions are designed to maximize the quality of data used to estimate PCTC Program catch and bycatch, including PSC. Delivered catch would be reported electronically by shoreside processors through eLandings. Estimates of at-sea discards and PSC would be derived solely from observer data. All catch would accumulate against cooperative allocations and other applicable limits.

Under the North Pacific Observer Program (Observer Program), all vessels and processors in the groundfish and halibut fisheries off Alaska are placed into one of two categories: (1) The full observer coverage category, where vessels and processors obtain observer coverage by contracting directly with observer providers; and (2) the partial observer coverage category, where NMFS has the flexibility to deploy observers when and where they are needed, as described in the annual deployment plan that is developed by NMFS in consultation with the Council. NMFS funds observer deployment in the partial observer coverage category by assessing a 1.65 percent fee on the ex-vessel value of retained groundfish and halibut from vessels that are not in the full observer coverage category.

The Council recommended and NMFS proposes that all vessels under the PCTC Program would be placed in the full coverage category of the Observer Program. All vessels used to harvest PCTC CQ would be required to carry at least one observer on board the vessel at all times except for CV deliveries of unsorted codends to a mothership pursuant to the exception specified at § 679.51(a)(2).

The owner of a trawl CV in the full observer coverage category would contract directly with a permitted full coverage observer provider to procure observer services as described at § 679.51(d). The owner of a trawl CV in the full observer coverage category would not be required to log fishing trips in Observer Declare and Deploy System (ODDS) under § 679.51(a)(1), and landings made by a vessel in the full observer coverage category would not be subject to the 1.65 percent partial observer coverage fee under § 679.55.

This action would not modify observer coverage requirements for trawl CVs participating in the BSAI trawl limited access fisheries during the C season. Regulations at Subpart E to part 679 specifying observer coverage requirements would continue to apply. The owner of a trawl CV would continue to be able to request, on an annual basis, that NMFS place the vessel in the full observer coverage category for all directed fishing for groundfish using trawl gear in the BSAI in the following calendar year. Voluntary placement in the full coverage category would apply to all non-PCTC directed fishing for groundfish using trawl gear in the specified calendar year.

Additionally, the Council recommended and NMFS proposes that all vessels used to harvest PCTC CQ would be required to provide equipment and at-sea data transmission capabilities to facilitate electronic transmission of observer data to NMFS. Requirements for non-AFA trawl CVs to install equipment necessary to facilitate at-sea observer data transmission requirements would not be effective until three years after the effective date of the final rule implementing the PCTC Program. This proposed rule also modifies regulations at § 679.51(e)(2)(iii)(A) to explicitly include the electronic transmission of observer data in the requirement for vessel operators to allow an observer to use the vessel's existing communications equipment for confidential entry, transmission, and receipt of work-related messages.

Under this proposed rule, all vessels participating in the PCTC Program would be required to provide an onboard computer that meets minimum specifications for use by an observer. Currently, NMFS uses and installs custom software (ATLAS) on the vessel's computer, and this software application is used by observers to enter the data they collect. The ATLAS software contains business rules that perform many quality control and data validation checks automatically, which dramatically increases the quality of the preliminary data. After the observer data are entered into the ATLAS software, it is transmitted to NMFS.

At-sea transmission of observer data improves data quality. To accommodate concerns by small vessel operators, the Council determined and NMFS proposes that, for the first three years after implementation, the current at-sea observer data transmission requirements would be maintained, unless the necessary equipment is installed before that time. Public testimony suggests that most of the vessels that do not currently have data transmission capability would realize the benefits from this program and be able to obtain the technology. Though the installation of equipment to facilitate at-sea data transmission on non-AFA vessels would not be required until after the first three years of the Program, this proposed rule clarifies that if the vessel already has equipment capable of facilitating at-sea data transmission, that equipment must be made available to the observer for use in transmitting work-related messages including collected data.

NMFS proposes requiring motherships receiving unsorted codends from a PCTC Program CV to comply with catch monitoring requirements specified at § 679.93(c) for Amendment 80 vessels and C/Ps. These requirements are already applicable to Amendment 80 C/Ps acting as a mothership and would continue to apply when participating vessels act as a mothership to process PCTC Program CQ. This proposed rule would not alter existing observer coverage requirements for trawl CVs delivering unsorted codends to a mothership in the BSAI. A trawl CV delivering unsorted codends to a mothership is not required to carry an observer because the catch is not brought on board the CV and not available for observer sampling. Rather, the catch is sorted and sampled by observers aboard the mothership.

Participating motherships would be required to have at least two observers

aboard the mothership, at least one of whom would be required to be endorsed as a lead level 2 observer. More than two observers would be required to be aboard if the observer workload restriction would otherwise preclude sampling as required. All PCTC Program catch, except halibut sorted on deck by vessels participating in the halibut deck sorting described at § 679.120, would be required to be weighed on a NMFS-approved scale in compliance with the scale requirements at § 679.28(b). Each haul would be required to be weighed separately and all catch made available for sampling by an observer.

NMFS proposes catch monitoring requirements for shoreside processors receiving deliveries from CVs harvesting PCTC Program Pacific cod. The Council recommended that all shoreside processors receiving deliveries from CVs harvesting PCTC Program Pacific cod would comply with a NMFS certified catch monitoring and control plan (CMCP); however, NMFS has determined that a CMCP is not necessary to ensure the accurate accounting of all PCTC landings. Instead, NMFS proposes that all groundfish landed by CVs described in § 679.51(a)(2) would be required to be sorted, weighed on a scale approved by the State of Alaska as described in § 679.28(c), and be made available for sampling by an observer, NMFS staff, or any individual authorized by NMFS. Any of these persons must be allowed to test any scale used to weigh groundfish to determine its accuracy.

E. PCTC Program Review

Under the Magnuson-Stevens Act, a LAPP program review shall be undertaken five years after implementation, with additional reviews occurring, at a minimum, every seven years thereafter. A formal review of the proposed PCTC Program by the Council would take place five years after the implementation of the program and would help the Council determine if the program is functioning as intended. The review process would allow for a full evaluation of the program's successes or challenges and provide the Council with details on unanticipated consequences. The Council determined that a formal review process was essential to the PCTC Program as a key tool to assess whether the PCTC Program was achieving the goals of the Magnuson-Stevens Act and the problem statement as identified in the Analysis (see **ADDRESSES**). This review and evaluation by the Council would include an assessment of the program objectives. Specifically, the Council would review whether the allocation of Pacific cod is fair and equitable given participation in the fishery, historical investments in and dependence upon the fishery, and employment in the harvesting and processing sectors. The Council would also assess performance of the program based on changes in annual cooperative formation, changes in product value, the number and distribution of processing facilities, and stability or use of annual processor associations with harvesting cooperatives. The focus of these reviews would be the impact of this action on the harvesting and processing sectors, as well as on fishery dependent communities. The Council would also assess whether the needs for management and enforcement, as well as data collection and analysis, are adequately met. Because the Council would undertake this review as part of routine work, NMFS is not proposing regulatory changes to implement this review process.

IX. Examples of Allocations Under the PCTC Program

The following section provides an example of QS allocations, annual CQ allocations, and PSC limit calculations under the proposed PCTC Program. For these examples, NMFS has used the 2022 harvest specifications for groundfish of the BSAI (87 FR 11626, March 2, 2022) to illustrate how annual TAC would correspond to issued QS, how portions of annual TAC would be allocated as CQ, and how annual PSC limits would be established for the cooperatives.

A. PCTC Program QS Pool Example

The first step of PCTC Program implementation would be for NMFS to estimate the QS pools for both harvesters and processors.

Step 1: Determine the Total Legal Landings for PCTC Program Harvesters

Using the official record, NMFS would sum the best 10 of 11 years of legal landings for all eligible LLP licenses during the 2009 through 2019 qualifying years for directed harvest of Pacific cod (or best 15 of 16 years from 2004 through 2019 for LLP licenses with transferable AI endorsements). This estimate may be subject to change if the official record is adjusted based on information provided through the QS application process.

Step 2: Determine the Total Deliveries of Legal Landings for PCTC Program Processors

Using the official record, NMFS would sum the best 10 of 11 years of deliveries of legal landings for all eligible processors during the 2009 through 2019 qualifying years for directed harvest of Pacific cod. This estimate may be subject to change if the official record is adjusted based on information provided through the QS application process.

Step 3: Establish the Initial PCTC Program QS Pools

NMFS would set the initial QS pool for harvesters and processors equal to the sum of legal landings assigned to each LLP license or processor in metric tons as of December 31, 2022, according the process described in Step 1 and Step 2 above. Each metric ton of legal landings in NMFS's official record on this date would yield one QS unit.

This example assumes that all potentially eligible persons applied, NMFS reviewed the applications, no applicant challenged the official record, and NMFS did not amend the official record. Each year, the harvester QS pool would correspond to 77.5 percent of the annual A and B season trawl CV DFA. Processor-held QS would correspond to 22.5 percent of the annual A and B season trawl CV DFA.

Step 4: Assign QS to an LLP License Holder

NMFS would assign QS to an LLP license holder who submits a timely and complete application within 30 days of the effective date of the final rule. Because issued QS would be permanently affixed to the LLP license, except under specific circumstances defined in Section III D, all qualifying LLP licenses would be reissued with PCTC Program QS.

Step 5: Assign QS to a Processor

NMFS would assign QS to a processor who submits a timely and complete application by within 30 days of the effective date of the final rule. The PCTC Program would issue a new PCTC Program QS permit to eligible processors, and QS would be permanently attached to those QS permits, except under specific circumstances defined in Section III D.

B. TAC and CQ Example for the PCTC Program

The annual trawl CV sector allocation is 22.1 percent of the combined BS subarea and AI subarea non-CDQ Pacific cod TAC. Table 1 in Section I of this preamble provides sector allocations for Pacific cod. The 2022 Pacific cod trawl CV sector allocation was 29,655 mt. The sector allocation is further subdivided between the A season (74 percent), B season (11 percent), and C season (15 percent). As stated above, the PCTC

Program allocation would be derived from the A and B season apportionment of the annual trawl CV sector allocation. Before allocating A and B season TAC to the PCTC Program as CQ, NMFS would determine an ICA for each season that would be account for the incidental catch of Pacific cod in other groundfish fisheries. This ICA would be deducted from the A and B season trawl CV sector apportionments, and the remainder would represent the A and B season DFAs that would ultimately be allocated as CQ. For this example, NMFS uses an ICA placeholder amount of 1,000 mt for the A season and 500 mt for the B season. However, these ICAs are only for an example and the ICA may change each year depending on projected incidental catch needs. In 2022, if the PCTC Program were in effect, the DFA for the A and B season—*i.e.,* the allocation of Pacific cod to the PCTC Program—would have been 20,945 mt in the A season ((29,655 × .74) − 1,000) and 2,762 mt in the B season ((29,655 × .11) − 500), for a total of 23,707 mt. The C season DFA would have been 4,448 mt (29,655 × .15); there is no ICA for the C season).

The PCTC Program apportionment would be assigned to PCTC cooperatives as CQ. The Council recommended and NMFS proposes that 77.5 percent of the annual CQ would be issued to cooperatives proportionate to the harvester-held QS and 22.5 percent of the annual PCTC Program CQ would be issued to cooperatives proportionate to the processor-held QS.

TABLE 5—FINAL 2022 SECTOR ALLOCATION AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC FOR THE TRAWL CV SECTOR AND THE PCTC PROGRAM

Sector	Season dates	PCTC program 2022 TAC apportionment	77.5 Percent of annual PCTC CQ issued to cooperatives for harvester-held QS (in mt)	22.5 Percent of annual CQ issued to cooperatives for processor-held QS (in mt)
Trawl CV sector TAC		29,655		
A Season ICA		1,000		
PCTC Program A Season DFA ((TAC × .74) − A season ICA).	January 20–April 1	20,945	16,232	4,713
B season ICA		500		
PCTC Program B Season DFA ((TAC × .11) − B season ICA).	April 1–June 10	2,762	2,141	621
Limited Access C Season DFA (TAC × .15)	June 10–November 1	4,448		

C. Annual CQ Issuance Example

Per Table 5, in this example the combined A and B season DFA to be issued as CQ totals 23,707 mt. Of that total, 77.5 percent (18,373 mt) would represent CQ derived from QS assigned to LLP licenses (harvester-held QS pool), and 22.5 percent (5,334 mt) would represent CQ derived from QS held by processors (processor-held QS pool). To illustrate how CQ would be issued to cooperatives, assume that there are three groups of LLP licenses that associate with three groups of processors holding PCTC QS to form three cooperatives. The groups of LLP license holders hold 30, 4, and 66 percent of the harvester-held QS pool of 18,373 mt, respectively. The processors hold 8, 41, and 51 percent of the processor-held QS pool of 5,334 mt, respectively. Harvester Group 1 associates with Processor Group 1 to form Cooperative 1, Harvester Group 2 associates with Processor Group 2 to form Cooperative 2, and Harvester Group 3 associates with Processor Group 3 to form Cooperative 3.

In this example, the cooperatives would be allocated annual totals of CQ as described in the table below (actual CQ permits would specify a separate CQ allocation for A and B seasons; those allocations are combined here for simplicity and to illustrate hypothetical annual totals):

TABLE 6—EXAMPLES OF CQ ISSUANCE TO THREE HYPOTHETICAL COOPERATIVES

	Percent of harvester QS (18,373 mt)	Percent of processor QS (5,334 mt)	2022 CQ derived from QS (in mt)	2022 Percent of PCTC total CQ
Harvester 1	30		5,512	
Processor 1		8	427	
Cooperative 1			5,939	25
Harvester 2	4		735	
Processor 2		41	2,187	
Cooperative 2			2,922	12
Harvester 3	66		12,126	
Processor 3		51	2,720	
Cooperative 3			14,846	63
Total CQ issued in A and B season	100	100	23,707	100

Classification

Pursuant to Section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the BSAI FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Impact Review (RIR)

A Regulatory Impact Review (RIR) was prepared to assess all costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). NMFS is recommending Amendment 122 and this proposed rule based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the Initial Regulatory Flexibility Analysis (IRFA) section.

Initial Regulatory Flexibility Analysis (IRFA)

This IRFA was prepared, as required by Section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. An IRFA describes why this action is being proposed; the objectives and legal basis for the proposed rule; the number of small entities to which the proposed rule would apply; any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules; and any significant alternatives to the proposed rule that would accomplish the stated objectives, consistent with applicable statutes, and that would minimize any significant adverse economic impacts of the proposed rule on small entities. Descriptions of this proposed rule, its purpose, and the legal basis are contained earlier in this preamble and are not repeated here.

Number and Description of Small Entities Regulated by This Proposed Rule

The alternatives would directly regulate owners and operators of harvesters and processors that participate in the BSAI trawl CV Pacific cod fishery including (1) trawl CVs, (2) shoreside processors, (3) floating processors, (4) trawl C/Ps acting as motherships, and (5) small government jurisdictions in the AI. This action may also impact observer providers that support the BSAI trawl CV Pacific cod fishery, but they would be indirectly impacted. Therefore, observer providers are not considered directly regulated entities in the IRFA prepared for this action.

A small business includes any firm that is independently owned and operated and not dominant in its field of operation. Businesses classified as primarily engaged in commercial fishing are considered small entities if they have less than 11 million dollars in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411). The RFA requires consideration of affiliations between entities for the purpose of assessing whether an entity is classified as small. The AFA pollock cooperatives, which make up a subset of the entities regulated under this proposed rule, are types of affiliation between entities. All of the AFA cooperatives have gross annual revenues that are substantially greater than 11 million dollars. Therefore, NMFS considers members in these cooperatives to be ''affiliated'' large (non-small) entities for RFA purposes. The eligible AFA entities are large entities based on those affiliations. The remaining 13 trawl CVs would be considered small entities. This count includes five trawl CVs that are greater than 60 ft LOA and eight CVs that are less than 60 ft LOA with a transferable AI endorsement.

Though C/Ps engage in both fish harvesting and fish processing activities, since at least 1993, NMFS Alaska Region has considered C/Ps to be predominantly engaged in fish harvesting rather than fish processing. Under this classification, the threshold of 11 million dollars in annual gross receipts is the appropriate threshold to apply to identify any C/Ps that are small entities. All the C/Ps that are directed regulated by this action do not meet the Small Business Administration (SBA) definition of a small entity due to cooperative affiliation.

Under the SBA's size standard for ''seafood product preparation and packaging'' (NAICS code 311710), seafood processors are considered small entities if they are independently owned and operated, not dominant in their field of operation, and have a combined annual employment of fewer than 750 employees. Of the plants that took deliveries of Pacific cod from 2017 through 2019 that are currently in business, one firm would be considered a small entity.

The RFA defines ''small governmental jurisdiction'' as the government of a city, county, town, school district or special district with a population of less than 50,000 people. Two small governmental jurisdictions are directly regulated under the proposed action. Adak and Atka would be required to submit a notice of their intent to process to NMFS to receive a portion of the AI CQ set-aside described in Section V of this preamble. The set-aside amount is intended to benefit the AI communities and participation by these communities is voluntary.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

The Council considered an extensive and elaborate suite of alternatives, options, and sub-options as it designed and evaluated a quota share program for the BSAI Pacific cod trawl CV sector, including a ''no action'' alternative. The RIR presents the complete set of alternatives, in various combinations with the complex suite of elements and options. The Council selected a preferred alternative that includes a suite of elements and options to manage the BSAI trawl CV Pacific cod sector. The alternatives proposed include no action (Alternative 1) and action to implement a cooperative style LAPP for the BSAI Pacific cod trawl CV sector (Alternatives 2a and 2b and Alternative 3, which is the Council's recommended action).

In general, the recommended LAPP includes allocations of QS to groundfish LLP licenses based on the legal landings of targeted BSAI Pacific cod in a Federal fishery during a range of qualifying years included in the options. The recommended action also allocates QS to a processor permit based on processing history of legal landings of BSAI Pacific cod harvested in a Federal fishery and deducted from the BSAI trawl CV sector apportionment during the qualifying years. One alternative considered but removed included gear conversion, which would have authorized BSAI Pacific cod quota associated with trawl CV LLP licenses to be fished annually by CVs using pot gear. In the end, the Council did not include the gear conversion element in its preferred alternative due to concerns over the possibility of high crab PSC in pot gear for red king crab (Zone 1) and *C. opilio*.

A second option considered but removed was a cooperative formation approach based on existing AFA and non-AFA membership. The AFA vessels and non-AFA vessels would have formed their cooperatives independently of each other. A person owning both an AFA vessel and non-AFA vessel would have been required to join the AFA cooperative for the AFA vessel and the non-AFA cooperative for the non-AFA vessel. Allowing only an AFA and non-AFA cooperative was rejected by the Council after considering the obstacles it would create under the various program elements being considered by the Council and withdrawal of industry support for the option. For example, under the options

that would allocate quota to processors, it would create a situation where multiple processors could designate CQ to a cooperative and require that the cooperative negotiate the terms and conditions of the harvest of those Pacific cod. This would have raised antitrust concerns that would need to be carefully navigated. Integrating multiple processors, the potential limitation on competition, and reduced cooperative formation choice were ultimately the issues associated with the two cooperative approach that led to it being removed from consideration. The recommended action allows a cooperative to associate with one processor. This model has been used successfully in the AFA program and CGOA Rockfish Program and reduces antitrust concerns that were raised to the Council under the AFA and non-AFA cooperative structure.

These alternatives constitute the suite of ''significant alternatives,'' under this proposed action, for purposes of the RFA. Based upon the best available scientific data, and consideration of the objectives of this action, NMFS did not identify alternatives to the proposed action that have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that have the potential to minimize any significant adverse economic impact of the proposed rule on small entities. After public process, the Council concluded that the proposed PCTC Program would best accomplish the stated objectives articulated in the problem statement and applicable statutes, and minimize to the extent practicable adverse economic impacts on the universe of directly regulated small entities.

Duplicate, Overlapping, or Conflicting Federal Rules

No Federal rules that may duplicate, overlap, or conflict with this proposed action have been identified.

Recordkeeping, Reporting, and Other Compliance Requirements

This action would implement new recordkeeping, reporting, and compliance requirements and revise existing requirements. These requirements are necessary for the management and monitoring of the PCTC Program.

All PCTC program participants would be required to provide additional information to NMFS for management purposes. Each harvester would be required to track harvests to avoid exceeding their allocation. As in other North Pacific rationalized fisheries, processors would provide catch recording data to managers to monitor harvest of allocations. Processors would be required to record deliveries and processing activities to aid in the Program administration.

To participate in the Program, persons are required to complete application forms, transfer forms, reporting requirements, and monitoring requirements. These requirements impose costs on small entities in gathering the required information and completing the information collections.

NMFS has estimated the costs of complying with the requirements based on information such as the burden hours per response, number of responses per year, and wage rate estimates from industry or the Bureau of Labor Statistics. Persons are required to complete many of the requirements at the start of the Program, such as the application to participate in the Program. Persons are required to complete some requirements every year, such as the cooperative application. Additionally, reporting for purposes of catch accounting or transfer of CQ among cooperatives is completed more frequently. The impacts of these changes are described in more detail in Sections 2.10.7 and 2.10.12 of the Analysis prepared for this proposed rule (see **ADDRESSES**).

New requirements for the PCTC Program include the Application for PCTC Program QS, the 90-day transfer window, the Application for PCTC Program CQ, the Application for Transfer of PCTC Program QS for Processors, the AI notice of intent to process, inter-cooperative transfers, the appeals process, and cost recovery fee.

The initial allocation process requires all eligible harvesters and processors who want to participate in the PCTC Program to submit an Application for PCTC Program QS to receive QS. This application is needed to determine the allocation of QS to eligible LLP licenses and to eligible processors. For CVs, NMFS will use the Catch Accounting System data to determine how much Pacific cod was harvested using the LLP license authorizing a CV and ask the current LLP license holder to verify the catch estimate. For processors NMFS will use the Catch Accounting System data to determine the amount of qualifying Pacific cod delivered to the processor, and the processors will verify the estimates. That information will also be used to determine whether the QS holder complies with the ownership and use cap limitations imposed under the program. Allowing persons to harvest a given percentage of the fishery is anticipated to allow harvesters to avoid fishing in bad weather conditions, improving safety of the fleet. The fleet is also expected to be able to deliver a consistently higher quality product. Quality improvements are expected to result from shorter times between harvest and processing and less damage to the fish in the holds by not fishing in bad weather.

In addition, the initial allocation process has a 90-day transfer window to allow persons to transfer QS between non-exempt AFA LLP licenses under certain conditions to honor private contracts and agreements associated with harvest of the AFA Pacific cod sideboard limits. This transfer window would allow persons to resolve any disputes or request QS transfers between LLP licenses. After the 90-day window for these transfers has closed, QS could not be separated from an LLP license or transferable AI endorsement unless necessary to prevent exceedances of the ownership or use caps, or if required by an operation of law.

The PCTC Program would include a standardized appeals process. The appeals process provides participants the required opportunity to dispute the catch and processing history records in the Catch Accounting System that are used to determine a person's allocation of QS. The appeals process is in addition to the 90-day transfer window discussed above and open to all participants, not just non-exempt AFA vessels.

Each year the cooperative manager would be required to submit an Application for PCTC Program CQ that identifies the LLP licenses and processor QS permits named to the cooperative and the vessels allowed to harvest the CQ. This application would include the inter-cooperative agreement that defines how the AI CQ set-aside will be harvested during years it is in effect. The Council requests that cooperatives submit an annual cooperative report to the Council.

The Application of Transfer of PCTC Program QS for Processors would be required for eligible processors to transfer their QS to other processors. Processor QS assigned to a processor permit established under the PCTC program may be transferred through the eFish system with approval by NMFS.

The PCTC program requires the cooperatives to set aside 12.5 percent of their allocation for delivery to Aleutian Island shoreplants in years that a representative from the City of Adak or the City of Atka files a valid intent to process with NMFS. The intent to process is necessary for NMFS and the cooperatives to know whether the regulations established for the set-aside are in effect during the A and B seasons.

If an intent to process is filed, it also triggers additional reporting in the cooperative report to the Council.

The PCTC Program is a LAPP and therefore NMFS is required to collect fees for the PCTC Program under sections 303A and 304(d)(2) of the Magnuson-Stevens Act. Section 304(d)(2) of the Magnuson-Stevens Act limits the cost recovery fee so that it may not exceed 3 percent of the ex-vessel value of the Pacific cod harvested under the PCTC Program. Ex-vessel volume and value reports currently being used to establish an average annual price for BSAI trawl caught Pacific cod would be used to establish the standard price and no additional collection of price data would be necessary. NMFS uses this information to meet the required provisions in sections 303A and 304(d) of the Magnuson-Stevens Act that require NMFS to collect these fees associated with recoverable costs.

In addition to the new requirements, the PCTC Program would revise existing requirements.

If LLP license holders want to transfer their LLP license or transferable AI endorsement and the associated PCTC Program QS, they must fill out an Application to Transfer a Groundfish or Crab LLP License. This form would be revised to collect information on the PCTC QS transaction, including QS prices, amount transferred, and whether there are multiple transferees in the event ownership caps would otherwise be exceeded. Information would be added to the LLP license transfer form identifying how PCTC QS would be distributed to the other LLP licenses if the original holder of the LLP license was assigned QS that was over the 5 percent ownership cap and qualified for the legacy exemption.

The PCTC Program would require updating ATLAS data transmission to enable the timely electronic entry, archival, and transmission of observer data for at-sea operations and shorebased processing plants.

This rule would require that all vessels submit logbooks when fishing in the PCTC program. All CVs greater than or equal to 60 ft LOA currently submit logbooks. Some CVs that may participate in the AI Pacific cod fishery are less than 60 ft LOA and may already file logbooks when fishing for Pacific cod. Many already complete logbooks based on their participation in other programs. However, a small number of CVs less than 60 ft LOA that do not currently submit a logbook would likely need to begin submitting a logbook if they choose to participate in the PCTC Program.

Paperwork Reduction Act

This proposed rule contains collection of information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This proposed rule would add new collections of information for the PCTC Program under a new OMB control number and revise requirements for collections of information under existing OMB Control Numbers 0648–0213 (Alaska Region Logbook and Activity Family of Forms); –0318 (North Pacific Observer Program); –0334 (Alaska License Limitation Program for Groundfish, Crab, and Scallops); –0711 (Alaska Cost Recovery and Fee Programs); –0678 (North Pacific Fishery Management Council Cooperative Annual Reports); and –0515 (Alaska Interagency Electronic Reporting System). However, because the collection of information authorized by OMB Control Number 0648–0515 is concurrently being revised in a separate action, the revisions to that collection of information in this proposed rule will be assigned a temporary control number that will later be merged into 0648–0515. The existing collections of information under OMB control numbers 0648–0330 (NMFS Alaska Region Scale & Catch Weighing Requirements) and 0648–0445 (NMFS Alaska Region Vessel Monitoring System (VMS) Program) will also provide information needed to implement the PCTC Program and will continue to apply. This proposed rule would not make any changes to these two collections of information. The public reporting burden estimates provided below for these collections of information include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OMB Control Number 0648–NEW

This proposed rule would create a new collection of information needed to implement PCTC Program. This new collection of information would authorize applications and processes used by the PCTC Program cooperatives, processors, LLP license holders, and community representatives to apply for permits, to transfer cooperative quota and quota share, to manage fishing and processor activity, and to appeal agency decisions. This new collection is necessary for NMFS to implement, monitor, and enforce the PCTC Program. The data would be used to ensure that program participants adhere to all harvesting, processing, ownership, and use limits. More information on these new requirements is provided in the Classification section of this proposed rule under the heading ''Recordkeeping, Reporting, and Other Compliance Requirements.''

The public reporting burden per individual response is estimated to average 2 hours for the Application for Pacific Cod Trawl Cooperative Program Quota Share, 2 hours for the Application for Pacific Cod Trawl Cooperative Program Cooperative Quota, 2 hours for the Application for Transfer of Pacific Cod Trawl Cooperative Program Quota Share for Processors, 10 minutes for the Application for Inter-Cooperative Transfer of Cooperative Quota, 30 minutes for the notification of intent to process Aleutian Islands Pacific cod, 2 hours for the 90-day transfer window for non-exempt AFA LLP license holders, and 4 hours for appeals.

OMB Control Number 0648–0213

This proposed rule would revise the existing requirements for the collection of information 0648–0213 related to logbooks because CVs participating in the PCTC Program would be required to submit a CV trawl gear daily fishing logbook. Some CVs less than 60 ft LOA that do not currently submit this logbook would need to begin doing so to participate in the PCTC Program. The revision to this collection of information adds the CVs less than 60 ft LOA that would need to start using the CV trawl gear daily fishing logbook as new respondents. CVs participating in the PCTC Program would have the option of using either the paper logbook approved under this collection or the electronic option, which is approved under OMB Control Number 0648–0515. The PCTC Program does not change the information collected by this logbook. This rule would require C/Ps and shoreside processors authorized as processors in the PCTC Program to submit a product transfer report; however, no changes would be needed to the respondents or responses for this report because all expected respondents are currently submitting it. The public reporting burden per individual response is estimated to average 18 minutes for the Catcher Vessel Trawl Daily Fishing Log and 20 minutes for the Product Transfer Report.

OMB Control Number 0648–0318

This proposed rule would revise the existing requirements for the collection of information 0648–0318 related to the North Pacific Observer Program because all vessels participating in the PCTC program would be required to have a

computer onboard and use ATLAS to submit observer data to NMFS. This would increase the number of vessels that need to provide observers access to a computer with ATLAS installed. PCTC Program participants would have up to three years to install ATLAS. Most vessels comply with this requirement by allowing NMFS to install ATLAS on an existing computer on the vessel. Many, if not all, of the vessels that would need to install ATLAS already have a computer that meets the minimum requirements, and they would only incur costs if they choose to purchase an additional computer. Estimated costs to purchase and install the data transmission system vary from about $5,000 to $37,000, depending on what a vessel needs to install. This rule also revises the existing requirements in this collection because catcher vessels that choose to participate in the PCTC Program would be required to be in the full observer coverage category instead of the partial observer coverage category. These catcher vessels would no longer be required to use ODDS to log fishing trips; therefore, this would decrease the number of respondents that log trips in ODDS. The public reporting burden per individual response is estimated to average 15 minutes to log a trip in ODDS.

OMB Control Number 0648–0334

This proposed rule would revise the existing requirements for the collection of information 0648–0334 related to the LLP license and the transferable AI endorsement to include PCTC Program QS information on the groundfish/crab LLP license transfer application form. Subject to public comment, no change is made to the burden because the estimate allows for differences in the time needed to complete and submit the form. The public reporting burden per individual response is estimated to average 1 hour for the Application for Transfer LLP Groundfish/Crab License.

OMB Control Number 0648–TEMPORARY

This proposed rule would revise the collection of information under OMB Control Number 0648–0515 associated with electronic reporting. However, due to multiple concurrent actions for that collection, the collection-of-information requirements will be assigned a temporary control number that will later be merged into OMB Control Number 0648–0515.

PCTC Program participants would need to use eLandings to submit landings and production information, which is approved under control number OMB 0648–0515. CVs participating in the PCTC Program would be required to submit a CV trawl gear daily fishing logbook and may use either the electronic logbook approved under OMB Control Number 0648–0515 or the paper logbook approved under OMB Control Number 0648–0213. CVs greater than 60 ft LOA are already required to maintain logbooks but this would be a new requirement for CVs less than 60 ft LOA. Some CVs less than 60 ft LOA that do not current submit the logbook would need to begin doing so. The temporary control number would cover the revisions necessary to –0515 for the CVs that choose to submit electronic logbooks. The PCTC Program does not change the information collected by this logbook but does increase the number of participants required to submit it. The public reporting burden per individual response is estimated to average 15 minutes for the CV electronic logbook.

OMB Control Number 0648–0678

This rule would revise the existing collection of information under 0648–0678 to because the Council requests PCTC Program cooperatives submit a voluntary annual cooperative report to the Council. This revision would add the PCTC Program cooperatives as new respondents that will submit an annual cooperative report. The public reporting burden per individual response is estimated to average 18 hours for the PCTC Program annual report.

OMB Control Number 0648–0711

This proposed rule would revise the existing requirements for the collection of information 0648–0711 related to cost recovery because the PCTC Program is a LAPP that is subject to a cost recovery fee under MSA 303A. This revision adds the PCTC Program cooperatives as new respondents that will submit a cost recovery fee to NMFS. The rule would require PCTC processors to submit an annual Pacific Cod Ex-vessel Volume and Value Report; however, this would not change the respondents or responses for this report because all expected respondents are currently submitting it. The public reporting burden per individual response is estimated to average 1 minute for the PCTC cost recovery fee and 1 minute for the Pacific Cod Ex-vessel Volume and Value Report.

Public Comments

Public comment is sought regarding: whether these proposed information collections are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Submit comments on these or any other aspects of the collection of information to NMFS Alaska Region (see **ADDRESSES**) or at *www.reginfo.gov/public/do/PRAMain.*

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: January 19, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.,* 1801 *et seq.,* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

■ 2. Amend § 679.2 by:
■ a. Removing the definitions of ''Affiliation for the purpose of defining AFA and the Rockfish Program'';
■ b. Adding the definitions of ''Affiliation for the purpose of defining AFA, Rockfish Program, and PCTC Program'';
■ c. Republishing the definition of ''Aleutian Islands shoreplant'';
■ d. Revising the definitions of ''Cooperative quota'' and ''CQ Permit''; and
■ e. Adding in alphabetical order the definitions of ''NMFS Alaska Region website,'' ''Pacific Cod Trawl Cooperative (PCTC) Program,'' ''PCTC Program cooperative,'' ''PCTC Program CQ,'' ''PCTC Program harvester QS pool,'' ''PCTC Program official record,'' ''PCTC Program participants,'' ''PCTC Program processor QS pool'', ''PCTC Program QS unit,'' and ''PCTC Program quota share (QS)''.

The additions and revisions read as follows:

§ 679.2 Definitions.

* * * * *

Affiliation for the purpose of defining AFA, Rockfish Program, and PCTC Program means a relationship between two or more individuals, corporations, or other business concerns, except CDQ groups, in which one concern directly or indirectly owns a 10 percent or greater interest in another, exerts control over another, or has the power to exert control over another; or a third individual, corporation, or other business concern directly or indirectly owns a 10 percent or greater interest in both, exerts control over both, or has the power to exert control over both.

(1) *What is 10 percent or greater ownership?* For the purpose of determining affiliation, 10 percent or greater ownership is deemed to exist if an individual, corporation, or other business concern directly or indirectly owns 10 percent or greater interest in a second corporation or other business concern.

(2) *What is an indirect interest?* An indirect interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest in a second entity is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's direct or indirect interest in the second entity.

(3) *What is control?* For the purpose of determining affiliation, control is deemed to exist if an individual, corporation, or other business concern has any of the following relationships or forms of control over another individual, corporation, or other business concern:

(i) Controls 10 percent or more of the voting stock of another corporation or business concern;

(ii) Has the authority to direct the business of the entity that owns the fishing vessel or processor. The authority to direct the business of the entity does not include the right to simply participate in the direction of the business activities of an entity that owns a fishing vessel or processor;

(iii) Has the authority in the ordinary course of business to limit the actions of or to replace the chief executive officer, a majority of the board of directors, any general partner or any person serving in a management capacity of an entity that holds 10 percent or greater interest in a fishing vessel or processor. Standard rights of minority shareholders to restrict the actions of the entity are not included in this definition of control provided they are unrelated to day-to-day business activities. These rights include provisions to require the consent of the minority shareholder to sell all or substantially all the assets, to enter into a different business, to contract with the major investors or their affiliates, or to guarantee the obligations of majority investors or their affiliates;

(iv) Has the authority to direct the transfer, operation, or manning of a fishing vessel or processor. The authority to direct the transfer, operation, or manning of a vessel or processor does not include the right to simply participate in such activities;

(v) Has the authority to control the management of or to be a controlling factor in the entity that holds 10 percent or greater interest in a fishing vessel or processor;

(vi) Absorbs all the costs and normal business risks associated with ownership and operation of a fishing vessel or processor;

(vii) Has the responsibility to procure insurance on the fishing vessel or processor, or assumes any liability in excess of insurance coverage;

(viii) Has the authority to control a fishery cooperative through 10 percent or greater ownership or control over a majority of the vessels in the cooperative, has the authority to appoint, remove, or limit the actions of or replace the chief executive officer of the cooperative, or has the authority to appoint, remove, or limit the actions of a majority of the board of directors of the cooperative. In such instance, all members of the cooperative are considered affiliates of the individual, corporation, or other business concern that exerts control over the cooperative; or

(ix) Has the ability through any other means whatsoever to control the entity that holds 10 percent or greater interest in a fishing vessel or processor.

* * * * *

Aleutian Islands shoreplant means a processing facility that is physically located on land west of 170° W longitude within the State of Alaska.

* * * * *

Cooperative quota (CQ):

(1) *For purposes of the Amendment 80 Program* means:

(i) The annual catch limit of an Amendment 80 species that may be caught by an Amendment 80 cooperative while fishing under a CQ permit;

(ii) The amount of annual halibut and crab PSC that may be used by an Amendment 80 cooperative while fishing under a CQ permit.

(2) *For purposes of the Rockfish Program* means:

(i) The annual catch limit of a rockfish primary species or rockfish secondary species that may be harvested by a rockfish cooperative while fishing under a CQ permit;

(ii) The amount of annual halibut PSC that may be used by a rockfish cooperative in the Central GOA while fishing under a CQ permit (see rockfish halibut PSC in this section).

(3) *For purposes of the PCTC Program means:*

(i) The annual catch limit of Pacific cod that may be caught by a PCTC Program cooperative while fishing under a CQ permit;

(ii) The amount of annual halibut and crab PSC that may be used by a PCTC Program cooperative while fishing under a CQ permit.

* * * * *

CQ permit means a permit issued to an Amendment 80 cooperative under § 679.4(o)(2), a rockfish cooperative under § 679.4(n)(1), or a PCTC Program cooperative under § 679.131(a).

* * * * *

NMFS Alaska Region website means *https://www.fisheries.noaa.gov/region/alaska.*

* * * * *

Pacific Cod Trawl Cooperative (PCTC) Program means the Pacific Cod Trawl Cooperative Program as implemented under subpart L of this part.

* * * * *

PCTC Program cooperative means a group of eligible Pacific cod harvesters who have chosen to form a cooperative under the requirements in § 679.132 in order to combine and harvest fish collectively under a CQ permit issued by NMFS.

PCTC Program CQ (See CQ)

PCTC Program harvester QS pool means the sum of Pacific cod QS units assigned to LLP licenses established for the PCTC Program fishery based on the PCTC Program official record.

PCTC Program official record means information used by NMFS necessary to determine eligibility to participate in the PCTC Program and assign specific harvest privileges or limits to PCTC Program participants based on Pacific cod legal landings as defined at § 679.130.

PCTC Program participants means those PCTC Program eligible harvesters and eligible processors who receive Pacific cod QS.

PCTC Program processor QS pool means the sum of Pacific cod QS units assigned to processor permits issued under the PCTC Program based on the PCTC Program official record.

PCTC Program QS unit means a single share of the PCTC Program QS pool based on Pacific cod legal landings.

PCTC Program quota share (QS) means QS units issued by NMFS

expressed in metric tons, derived from the Pacific cod legal landings assigned to an LLP license or PCTC Program QS permit held by a processor and used as the basis for the issuance of annual CQ.

* * * * *

■ 3. In § 679.4, add paragraphs (a)(1)(xvi), (k)(16) and paragraph (q) to read as follows:

§ 679.4 Permits.

(a) * * *

(1) * * *

If program permit or card type is:	Permit is in effect from issue date through the end of:	For more information, see . . .
* * * * * * *		
(xvi) PCTC Program:		
(A) PCTC Program QS permit (for processors)	10 Years	Paragraph (q) of this section.
(B) PCTC Program CQ permit	Until expiration date shown on permit	Paragraph (q) of this section.

* * * * *

(k) * * *

(16) *PCTC Program.* In addition to other requirements of this part, an LLP license holder must have PCTC Program QS assigned to their groundfish LLP license to join a PCTC Program cooperative to harvest Pacific cod.

* * * * *

(q) *PCTC Program Permits.*

(1) *PCTC Program Cooperative Quota Permits.* (i) A CQ permit is issued annually to a PCTC Program cooperative if the members of that cooperative have submitted a complete and timely application for CQ as described in § 679.131 that is approved by the Regional Administrator. A CQ permit authorizes a PCTC Program cooperative to participate in the PCTC Program. The CQ permit will indicate the amount of Pacific cod that may be harvested by the PCTC Program cooperative, and the amount of halibut PSC and crab PSC that may be used by the PCTC Program cooperative. The CQ permit will list the members of the PCTC Program cooperative, the trawl catcher vessels that are authorized to fish under the CQ permit for that cooperative, and the PCTC Program processor(s) with whom that cooperative is associated.

(ii) A CQ permit is valid only until the end of the BSAI Pacific cod B season for the year in which the CQ permit is issued;

(iii) A legible copy of a valid CQ permit must be carried on board the vessel(s) used by the PCTC Program cooperative.

(2) *PCTC Program Quota Share Permits for Processors.*

(i) NMFS will issue PCTC Program QS permits to eligible processors if the owner(s) submits to the Regional Administrator a completed application for PCTC Program QS as described in § 679.130 that is subsequently approved.

(ii) A processor may associate the QS assigned to the PCTC Program QS permit to a PCTC Program cooperative as described in § 679.131.

* * * * *

■ 4. Amend § 679.5 by:

■ a. Adding paragraph (a)(1)(iii)(G);

■ b. Revising paragraph (a)(4)(i); and

■ c. Adding paragraph (x).

The additions and revisions read as follows:

§ 679.5 Recordkeeping and Reporting (R&R).

(a) * * *

(1) * * *

(iii) * * *

If harvest made under . . . program	Record the . . .	For more information, see . . .
* * * * * * *		
(G) PCTC Program	Cooperative number	subpart L to this part.
* * * * * * *		

(4) * * *

(i) *Catcher vessels less than 60 ft (18.3 m) LOA.* Except for vessels using pot gear as described in paragraph (c)(3)(i)(B)(*1*) of this section or vessels participating in the PCTC Program as described in paragraph (x) of this section, the owner or operator of a catcher vessel less than 60 ft (18.3 m) LOA is not required to comply with the R&R requirements of this section, but must comply with the vessel activity report described at paragraph (k) of this section.

* * * * *

(x) *PCTC Program.* The owners and operators of catcher vessels and processors authorized as participants in the PCTC Program must comply with the applicable recordkeeping and reporting requirements of this section and must assign all catch to a PCTC Program cooperative at the time of catch or receipt of groundfish. Owners of catcher vessels and processors authorized as participants in the PCTC Program must ensure that their designated representatives or employees comply with applicable recordkeeping and reporting requirements as described in § 679.134.

■ 5. In § 679.7 add paragraph (m) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(m) *PCTC Program—*

(1) *General.*

(i) Name an LLP license in more than one PCTC Program cooperative application in a fishing year.

(ii) Use a vessel to catch or receive a PCTC Program cooperative's Pacific cod when that vessel was not listed on the PCTC Program cooperative's application for PCTC Program CQ.

(iii) Fail to comply with any other requirement or restriction specified in this part or violate any provision of this part.

(2) *Vessel operators participating in the PCTC Program.*

(i) Fail to follow the catch monitoring requirements detailed in § 679.134 while fishing under a CQ permit issued to a PCTC Program cooperative.

(ii) Operate a vessel that is subject to a sideboard limit detailed in § 679.133, as applicable, and fail to follow the catch monitoring requirements detailed in § 679.134.

(iii) Exceed the ownership or use caps specified at § 679.133. Owners and operators of vessels participating in the

PCTC Program are jointly and severally liable for any violation of PCTC Program regulations while fishing under the authority of a CQ permit.

(3) *VMS.*

(i) Operate a vessel in a PCTC Program cooperative and fail to use functioning VMS equipment as described at § 679.134.

(ii) Operate a vessel that is subject to a sideboard limit detailed in § 679.133 and fail to use functioning VMS equipment as described in § 679.134.

(4) *PCTC Program processors.*

(i) Take deliveries of, or process, PCTC Program Pacific cod harvested by a catcher vessel fishing under the authority of a PCTC CQ permit unless operating as a processor.

(ii) Process any groundfish delivered by a catcher vessel fishing under the authority of a CQ permit not weighed on a scale approved by the State of Alaska. The scale must meet the requirements specified in § 679.28(c).

(iii) Fail to submit a timely and complete Pacific cod Ex-vessel Volume and Value Report as required under § 679.5(u)(1).

(iv) Use a catcher/processor designated on an LLP license with a BSAI Pacific cod trawl mothership endorsement to sort, process, or discard any species, except halibut sorted on deck by vessels participating in halibut deck sorting described at § 679.120, before the total catch is weighed on a scale that meets the requirements of § 679.28(b).

(v) Use a catcher/processor designated on an LLP license with a BSAI Pacific cod trawl mothership endorsement to process Pacific cod in excess of the at-sea processing sideboard limit defined at § 679.133(b)(2) and assigned to the LLP license.

(vi) Process an amount of Pacific cod that exceeds use caps specified in § 679.133. The owners and operators of the individual processors that process Pacific cod are jointly and severally liable for any violation of PCTC Program regulations.

(5) *PCTC cooperatives.*

(i) Fail to retain any Pacific cod caught by a vessel when that vessel is fishing under the authority of a PCTC Program cooperative CQ permit.

(ii) Harvest PCTC Program Pacific cod, use halibut PSC, or use crab PSC assigned to a PCTC cooperative in the BSAI without having on board a legible copy of valid PCTC Program CQ permit.

(iii) Begin a fishing trip for PCTC Program Pacific cod with any vessel named in a PCTC Program cooperative if the total amount of unharvested PCTC Program Pacific cod on a CQ permit currently held by that cooperative is zero or less.

(iv) Operate a vessel fishing under the authority of a CQ permit issued to a PCTC Program cooperative and have any Pacific cod aboard the vessel unless those fish were harvested under the authority of a PCTC Program CQ permit.

(v) Have a negative balance in a PCTC Program CQ account after the end of the calendar year for which a PCTC Program CQ permit was issued.

(vi) Fail to submit a PCTC Program cost recovery fee payment as required under § 679.135.

* * * * *

■ 6. Amend § 679.20 by, revising paragraph (a)(7)(viii) and adding paragraph (e)(3)(vi) to read as follows:

§ 679.20 General limitations.

(a) * * *

(7) * * *

(viii) *Aleutian Islands PCTC Program set-aside provisions.*—During the annual harvest specifications process, the Regional Administrator will establish the Aleutian Islands PCTC Program set-aside through the process set forth at § 679.132.

* * * * *

(e) * * *

(3) * * *

(vi) For a catcher/processor with a BSAI Pacific cod trawl mothership endorsement that receives an unsorted codend delivered by a catcher vessel authorized to harvest PCTC Program Pacific cod, the maximum retainable amount for each species or species group applies at any time for the duration of the fishing trip and must be applied to only the PCTC Program hauls during a fishing trip.

* * * * *

■ 7. In § 679.21, revise paragraphs (b)(1)(ii)(B) introductory text and (B)(5); (b)(2)(iii)(A) and (B); (b)(4)(i)(B); (e)(3)(iv) introductory text and (iv)(E); and add paragraph (e)(7)(v) to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) *Trawl fishery categories.* For purposes of apportioning the trawl PSC limit set forth under paragraph (b)(1)(ii)(A)(1) of this section among trawl fisheries, the following fishery categories are specified and defined in terms of round-weight equivalents of those groundfish species or species groups for which a TAC has been specified under § 679.20.

* * * * *

(*5*) *Pacific cod fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of Pacific cod that is greater than the retained amount of any other groundfish fishery category defined under this paragraph (b)(1)(ii)(B). This Pacific cod fishery is further apportioned between the PCTC Program, the trawl catcher vessel limited access C season, and AFA catcher/processors as established at § 679.131(c) and (d).

* * * * *

(2) * * *

(iii) * * *

(A) *Unused seasonal apportionments.* Unused seasonal apportionments of trawl fishery PSC allowances made under paragraph (b)(2) of this section will be added to its respective fishery PSC allowance for the next season during a current fishing year except for the Pacific cod fishery apportionment to the PCTC Program, which follows the regulations at § 679.131(c) and (d).

(B) *Seasonal apportionment exceeded.* If a seasonal apportionment of a trawl fishery PSC allowance made under paragraph (b)(2) of this section is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from its respective apportionment for the next season during a current fishing year except for the Pacific cod fishery apportionment to the PCTC Program, which follows the regulations at § 679.131(c) and (d).

* * * * *

(4) * * *

(i) * * *

(B) *Closures.* Except as provided in paragraph (b)(4)(i)(A) of this section, if, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the trawl fishery categories listed in paragraphs (b)(1)(ii)(B)(*2*) through (*6*) of this section will catch the halibut PSC allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (b)(1)(i) or (ii) of this section, NMFS will publish in the **Federal Register** the closure of the entire BSAI to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season. This does not apply to allocations to the PCTC Program specified at § 679.133(b).

* * * * *

(e) * * *

(3) * * *

(iv) *Trawl fishery categories.* For purposes of apportioning trawl PSC limits for crab and herring among fisheries, other than crab PSC CQ assigned to an Amendment 80

cooperative, the following fishery categories are specified and defined in terms of round-weight equivalents of those groundfish species or species groups for which a TAC has been specified under § 679.20.

* * * * *

(E) *Pacific cod fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of Pacific cod that is greater than the retained amount of any other groundfish fishery category defined under this paragraph (e)(3)(iv). The Pacific cod fishery is further apportioned between the PCTC Program, the trawl catcher vessel limited access C season, and AFA catcher/processors as established at § 679.131(d).

* * * * *

(7) * * *

(v) Paragraph (e)(7) of this section does not apply to apportionments to the PCTC Program as described in § 679.130.

* * * * *

■ 9. Amend § 679.51 by:

■ a. Revising paragraph (a)(2)(i)(C)(*4*);

■ b. Adding paragraphs (a)(2)(i)(C)(*5*) and (vi)(G);

■ c. Revising paragraphs (e)(1)(iii)(A) and (B) introductory text; and

■ d. Adding paragraph (e)(1)(iii)(D).

The revisions and additions read as follows:

§ 679.51 Observer and Electronic Monitoring System requirements for vessels and plants.

(a) * * *

(2) * * *

(i) * * *

(C) * * *

(*4*) Using trawl gear in the BSAI if the vessel has been placed in the full observer coverage category under paragraph (a)(4) of this section; or

(*5*) Participating in the PCTC Program.

* * * * *

(vi) * * *

(G) *PCTC Program Motherships.* A mothership that receives unsorted codends from catcher vessels harvesting Pacific cod under the PCTC Program must have at least two observers aboard the mothership, at least one of whom must be endorsed as a lead level 2 observer. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

* * * * *

(e) * * *

(1) * * *

(iii) * * *

(A) *Observer use of equipment.* Allow an observer to use the vessel's communications equipment and personnel, on request, for the confidential entry, transmission, and receipt of work-related messages (including electronic transmission of data), at no cost to the observer or the United States.

(B) *Equipment, software, and data transmission requirements.* The operator of a catcher/processor (except for a catcher/processor placed in the partial observer coverage category under paragraph (a)(3) of this section), mothership, catcher vessel 125 ft LOA or longer (except for a catcher vessel fishing for groundfish with pot gear), or a catcher vessel participating in the PCTC Program (except for paragraph (D)) must provide the following equipment, software and data transmission capabilities:

* * * * *

(D) *PCTC Program.* The operator of a non-AFA catcher vessel participating in the PCTC Program is not required to comply with paragraph (e)(1)(iii)(B)(*3*) of this section to provide data transmission capability until [*Date 3 years after effective date of the final rule*]. However, once any non-AFA catcher vessel in the PCTC Program is capable of at-sea data transmission, the operator must comply.

* * * * *

§ 679.64 [Amended]

■ 10. In § 679.64, remove and reserve paragraphs (b)(3)(ii) and (4)(i).

■ 11. Add Subpart L, consisting of §§ 679.130 through 679.135 to read as follows:

Subpart L—Pacific Cod Trawl Cooperative Program

Sec.
679.130 Allocation, use, and transfer of PCTC Program QS permits.
679.131 PCTC Program annual harvester privileges.
679.132 Aleutian Islands set-aside provisions in the PCTC Program.
679.133 PCTC Program use caps and sideboard limits.
679.134 PCTC Program permits, catch monitoring, catch accounting, and recordkeeping and reporting.
679.135 PCTC Program cost recovery.

Subpart L—Pacific Cod Trawl Cooperative Program

§ 679.130 Allocation, use, and transfer of PCTC Program QS.

(a) *Applicable areas and seasons.*

(1) *Applicable fishery.* The PCTC Program applies to the Pacific cod trawl catcher vessel sector in the BSAI as defined in § 679.20(a)(7)(ii)(A).

(2) *PCTC Program Fishing Seasons.* The following fishing seasons apply to fishing under this subpart subject to other provisions of this part:

(i) *PCTC Program cooperative A season.* Fishing by vessels participating in a cooperative is authorized from 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., April 1.

(ii) *PCTC Program cooperative B season.* Fishing by vessels participating in a cooperative is authorized from 1200 hours, A.l.t., April 1 through 1200 hours, A.l.t., June 10.

(iii) *Limited Access C Season.* The PCTC Program does not apply to the Pacific cod trawl catcher vessel C season, as defined in § 679.23(e)(5)(ii)(C)(1).

(b) *Pacific cod legal landings.* Pacific cod legal landings means the retained catch of Pacific cod caught using trawl gear in a management area in the BSAI by a catcher vessel during the directed fishing season for Pacific cod that:

(1) Was made in compliance with state and Federal regulations in effect at that time; and

(2) Was recorded on a State of Alaska fish ticket for shoreside deliveries or in observer data for mothership deliveries; and

(3) Was the predominately retained species on the fishing trip; and

(4) Was authorized by:

(i) An LLP license and caught in the A or B season of a Federal or parallel groundfish fishery during the qualifying years 2009 through 2019; or

(ii) An LLP license with a transferable AI endorsement prior to receiving an AI endorsement and was caught in a parallel fishery between January 20, 2004 and September 13, 2009; and

(5) Was not made in a CDQ fishery; and

(6) Was not made in a State of Alaska GHL fishery.

(c) *Eligible PCTC Program harvesters.* NMFS will assign Pacific cod legal landings to an LLP license only if the qualifying Pacific cod legal landings of BSAI trawl catcher vessel Pacific cod were made under the authority of a fully transferable LLP license endorsed for BS or AI Pacific cod with a trawl gear designation from 2009 through 2019 or under the authority of an LLP license endorsed for Pacific cod with a trawl gear designation prior to earning a transferable AI endorsement from 2004 through September 13, 2009;

(d) *Assigning trawl catcher vessel Pacific cod legal landings to an LLP license.*

(1) NMFS will assign Pacific cod legal landings to an LLP license in the form of QS only if the holder of the LLP license with those landings submits a timely and complete application for

Pacific cod QS, in paragraph (h) of this section, that is approved by NMFS.

(2) NMFS will assign Pacific cod legal landings to an LLP license that meets the requirements of paragraph (b) of this section.

(3) NMFS will reissue LLP licenses to eligible harvesters that specify the number of QS units assigned to their LLP licenses.

(e) *Eligible PCTC Program Processors.* NMFS will assign legal landings to an eligible PCTC Program processor if the processor operates under the authority of a valid FFP or FPP and received deliveries of legal landings of Pacific cod from the trawl catcher vessel sector from 2009 through 2019. A processor is ineligible to receive PCTC Program QS if its FFP or FPP is no longer active as of [Date *30 days after the effective date of the final rule*].

(f) *Assigning Pacific cod processing history to an eligible processor.*

(1) NMFS will assign Pacific cod processing history to a processor in the form of QS only if the FFP or FPP holder submits a timely and complete application for PCTC Program QS that is approved by NMFS pursuant to paragraph (h) of this section.

(2) NMFS will assign Pacific cod processing history based on legal landings delivered to a processor authorized by an FPP or FFP that meets the requirements of this section.

(3) For the initial allocation of QS, qualifying processing history is attached to the processor at the time legal landings were received.

(4) An eligible processor will be issued a PCTC Program QS permit that specifies the number of QS units assigned to that processor.

(g) *PCTC Program official record.*

(1) *Use of the PCTC Program official record.* The PCTC Program official record will contain information used by the Regional Administrator to determine:

(i) The amount of Pacific cod legal landings as defined in § 679.130 assigned to an LLP license;

(ii) The amount of Pacific cod processing history of legal landings as defined in § 679.130 assigned to an FPP or FFP;

(iii) The amount of PCTC Program QS resulting from Pacific cod legal landings assigned to an LLP license held by an eligible harvester, or QS resulting from Pacific cod processing history assigned to an FPP or FFP held by an eligible processor;

(iv) The amount of Pacific cod sideboard ratios assigned to LLP licenses;

(v) Eligibility to participate in the PCTC Program; and

(vi) QS assigned to PCTC Program participants.

(2) *Presumption of correctness.* The PCTC Program official record is presumed to be correct. An applicant participating in the PCTC Program has the burden to prove otherwise.

(3) *Documentation.* Only Pacific cod legal landings and processing history of legal landings, as described in paragraph (b) of this section, shall be used to establish an allocation of PCTC Program QS. Evidence of legal landings shall be limited to documentation of state or Federal catch reports that indicate the amount of Pacific cod harvested, the groundfish reporting area in which it was caught, the vessel and gear type used to catch it, and the date of harvesting, landing, or reporting.

(4) *Non-severability of Pacific cod legal landings.* Pacific cod legal landings are non-severable from the LLP license or PCTC Program QS Permit to which those Pacific cod legal landings are assigned according to the PCTC Program official record except under the following provisions:

(i) If multiple LLP licenses authorized catch by a vessel, in the absence of an agreement provided by the LLP license holder at the time of application for QS, qualifying catch history will be assigned to an LLP license by the owner of the vessel that made the catch at the time of application.

(ii) *90-day transfer provision.*

(A) For the LLP licenses associated with non-exempt AFA catcher vessels, within 90 days of initial issuance of QS, the owners of the LLP licenses that are associated with AFA non-exempt catcher vessels that had engaged in fish transfer agreements during the qualifying periods may transfer QS to other LLP licenses associated with AFA non-exempt vessels, subject to the ownership cap in § 679.133.

(B) NMFS will execute permanent transfers of QS between eligible LLPs during the 90-day transfer provision upon showing that both the transferor and transferee agree to the one-time transfer of QS and understand the transfer will be permanent, or upon showing a transfer is authorized by an operation of law (*e.g.*, a court order). Requests to transfer QS must specify which LLP is transferring QS, which LLP is receiving QS, and the amount of QS to be transferred.

(C) After the expiration of the 90-day transfer provision, PCTC QS will no longer be severable from the LLP license to which it is assigned unless authorized by the transfer rules specified in paragraph (f) of this section or modification is supported by an operation of law.

(h) *Application for PCTC Program Quota Share—*

(1) *Submission of an application for PCTC Program quota share.* A person who wishes to receive QS to participate in the PCTC Program as an eligible harvester or an eligible processor must submit a timely and complete application for PCTC Program QS. An application form will be provided by NMFS or available from NMFS Alaska Region website as defined at § 679.2. The acceptable submittal methods will be described on the application form.

(2) *Deadline.* A completed application for PCTC Program QS must be received by NMFS no later than 1700 hours, A.l.t., on [Date *30 days after the effective date of the final rule*], or if sent by U.S. mail, postmarked by that time. Objective written evidence of timely application will be considered proof of a timely application.

(3) *Contents of application.* A timely and complete application must contain the information specified on the application for PCTC Program QS with all required documentation attached.

(i) Additional required documentation for LLP license holders. Vessel names, ADF&G vessel registration numbers, and USCG documentation numbers of all vessels that fished under the authority of each LLP license, including dates when landings were made under the authority of an LLP license from 2009 through 2019 or under the authority of an LLP license prior to earning a transferable AI endorsement from 2004–2019;

(ii) Additional required documentation for processors. Processor name, FFP or FPP number, and location of processing plant, including dates when landings were made under the authority of an LLP license from 2009 through 2019;

(iii) The applicant must sign and date the application certifying under penalty of perjury that all information is true and correct. If the application is completed by a designated representative, then explicit authorization signed by the applicant must accompany the application.

(4) *Application evaluation.* The Regional Administrator will evaluate applications and compare all claims of catch history or processing history in an application with the information in the PCTC Program official record. Application claims that are consistent with information in the PCTC Program official record will be approved by the Regional Administrator. Application claims that are inconsistent with the PCTC Program official record will not be approved unless supported by documentation sufficient to substantiate

such claims. An applicant who submits claims of catch history or processing history that are inconsistent with the official record without sufficient evidence, or an applicant who fails to submit the information specified in paragraph (d) of this section, will be provided a single 30-day evidentiary period to submit the specified information, submit evidence to verify their claims of catch or processing history, or submit a revised application consistent with information in the PCTC Program official record. An applicant who claims catch or processing history that is inconsistent with information in the PCTC Program official record has the burden of proving that the submitted claims are correct. Any claims that remain unsubstantiated after the 30-day evidentiary period will be denied. All applicants will be notified of NMFS's final application determinations by an initial administrative determination (IAD), which will inform applicants of their appeal rights under 15 CFR part 906.

(5) *Appeals.* An applicant may appeal an IAD under the provisions in 15 CFR part 906.

(i) *Assigning PCTC Program QS to Harvesters and Processors.* The Regional Administrator will assign PCTC Program QS only to an eligible harvester or eligible processor who submits a timely application for PCTC Program QS that is approved by NMFS.

(1) *Calculation of PCTC Program QS allocation to LLP licenses without a transferable AI endorsement.* NMFS will assign a specific amount of PCTC Program QS units to each LLP license based on the Pacific cod legal landings of each LLP license using information from the PCTC Program official record according to the following procedures:

(i) Determine the Pacific cod legal landings for each LLP license for each calendar year from 2009 through 2019.

(ii) Select the 10 calendar years from the qualifying time period with the highest amount of legal landings for each LLP license, including years with zero metric tons if necessary.

(iii) Sum the Pacific cod legal landings of the highest 10 years for each LLP license. This yields the QS units (in metric tons) for each LLP license.

(2) *Calculation of PCTC Program QS allocation to LLP licenses with transferable AI endorsements.* NMFS will assign a specific amount of PCTC Program QS units to each LLP license with a transferable AI endorsement based on the Pacific cod legal landings of each using information from the PCTC Program official record according to the following procedures:

(i) Determine the Pacific cod legal landings for each LLP license with a transferable AI endorsement for each calendar year from 2004 through 2019.

(ii) Select the fifteen calendar years that yield the highest amount of legal landings for each LLP license, including years with zero metric tons if necessary.

(iii) Sum the Pacific cod legal landings of the highest fifteen years for each LLP license with transferable AI endorsement. This yields the QS units (in metric tons) for each LLP license with a transferable AI endorsement.

(3) *Official Record Date.* The initial PCTC Program QS pool for all LLP licenses, with and without transferable AI endorsements, is the sum of the sum of the QS units assigned to all LLP licenses in metric tons based on the PCTC Program official record as of December 31, 2022.

(4) *Calculation of PCTC Program QS allocation to processors.* NMFS will assign a specific amount of Pacific cod QS units to each eligible processor based on the Pacific cod legal landings delivered to each FPP or FFP using information from the PCTC Program official record according to the following procedures:

(i) Sum the Pacific cod legal landings delivered to each FPP or FFP for each calendar year from 2009 through 2019;

(ii) Select the ten calendar years that yield the highest amount of legal landings delivered to each FPP or FFP, including years with zero metric tons if necessary;

(iii) Sum the Pacific cod legal landings of the highest 10 years for each FPP or FFP. This yields the QS units for each eligible processor, which will be specified on a PCTC Program Processor Permit for that processor;

(iv) The PCTC Program QS pool for processors is the sum of all QS units assigned to processors in metric tons based on the PCTC official record as of December 31, 2022.

(j) *Transfer of PCTC Program QS.*

(1) Transfer of an LLP license with PCTC Program QS. A person may transfer an LLP license and any PCTC Program QS assigned to that LLP license under the provisions in § 679.4(k)(7), provided that the LLP license is not assigned PCTC Program QS in excess of the ownership cap specified in § 679.133 at the time of transfer.

(2) Transfer of PCTC Program QS assigned to LLP licenses that exceeds PCTC Program QS ownership caps.

(i) If an LLP license receives an initial allocation of QS that exceeds an ownership cap specified in § 679.133(a), upon transfer of the LLP license, the LLP license holder may transfer the amount of QS in excess of the ownership cap separately from the LLP license and assign it to one or more LLP licenses. However, a transfer will not be approved by NMFS if that transfer would cause the receiving LLP license to exceed an ownership cap specified in § 679.133(a).

(ii) Prior to the transfer of an LLP license that received an initial allocation of QS that exceeds an ownership cap specified in § 679.133(a), the LLP license holder must transfer the QS that is in excess of the ownership cap separately from that LLP license and assign it to one or more LLP licenses. On completion of the transfer of QS, the LLP license that was initially allocated an amount of QS in excess of the ownership cap may not exceed any ownership cap specified in § 679.133(a).

(iii) Any QS associated with the LLP license that is in excess of the ownership cap may be transferred only if an application to transfer LLP licenses is approved as specified in § 679.4(k)(7).

(iv) QS that is transferred from an LLP license that was initially allocated an amount of QS in excess of the ownership cap specified in § 679.133(a) and assigned to another LLP license may not be severed from the receiving LLP license.

(3) Transfer of processor PCTC Program QS Permits. A person may transfer a PCTC Program QS Permit to another processor eligible to hold that permit and any QS assigned to that permit provided that the permit is not assigned QS in excess of the ownership cap specified in § 679.133(a) at the time of transfer. PCTC Program QS may be severed from a PCTC Program QS permit at the time of transfer if the transfer of the PCTC Program QS permit would otherwise result in a transferee exceeding an ownership cap. A PCTC Program QS Permit held by a processor and associated QS may be transferred only if the application for transfer of PCTC Program QS Permit is filled out entirely.

(4) Transfer of PCTC Program QS assigned to a processor-held PCTC Program QS Permit that exceeds PCTC Program ownership caps.

(i) If a PCTC Program QS Permit receives an initial allocation of QS that exceeds an ownership cap specified in § 679.133(a), the processor may transfer QS in excess of the ownership cap separately from that PCTC Program QS Permit and assign it to the PCTC Program QS Permit of one or more eligible processors. However, a transfer may not be approved by NMFS if that transfer would cause the receiving processor to exceed an ownership cap specified in § 679.133(a).

(ii) Prior to the transfer of a PCTC Program QS Permit that received an initial allocation of QS that exceeds an ownership cap specified in § 679.133(a), the permit holder must transfer the QS that is in excess of the ownership cap separately from that PCTC Program QS Permit and assign it to one or more PCTC Program QS Permits. On completion of the transfer of QS, the PCTC Program QS Permit that was initially allocated an amount of QS in excess of the ownership cap may not exceed any ownership cap specified in § 679.133(a).

(iii) Any QS associated with the PCTC Program QS Permit held by a processor that is in excess of an ownership cap may be transferred only if the application for transfer of PCTC Program QS Permit is filled out entirely.

§ 679.131 PCTC Program annual harvester privileges.

(a) *Assigning PCTC Program CQ to a PCTC cooperative.*

(1) *General.* (*See* also § 679.4(q)).

(i) Every calendar year, PCTC Program QS assigned to LLP licenses and PCTC Program QS Permits held by a PCTC Program processor must be assigned to a PCTC cooperative as a CQ permit to use the CQ derived from that PCTC QS to catch, process, or receive Pacific cod, crab PSC, or halibut PSC assigned to the PCTC Program.

(ii) NMFS will assign CQ permit to a PCTC Program cooperative based on the aggregate QS of all LLP licenses and associated processors designated on an application for CQ that is approved by the Regional Administrator as described under paragraph (a)(4) of this section.

(iii) Eligible processors must be associated with a PCTC Program cooperative for the QS assigned to that processor's PCTC Program QS Permit to be issued to a PCTC Program cooperative as CQ.

(2) *PCTC Program QS issued after issuance of CQ or Pacific cod trawl catcher vessel sector TAC.* Any PCTC Program QS on an LLP license or PCTC Program QS Permit assigned to a PCTC QS holder after NMFS has issued CQ for a calendar year, will not result in any additional CQ being issued to a PCTC cooperative if that QS holder has assigned their QS to a PCTC Program cooperative for that calendar year.

(3) *Failure to designate QS to a PCTC Program cooperative.* Failure to designate an LLP license with PCTC Program QS or a PCTC Program QS Permit on a timely and complete application for CQ that is approved by the Regional Administrator as described under paragraph (a)(4) of this section, will result in the Regional Administrator not assigning that QS to a PCTC Program cooperative for the applicable calendar year.

(4) *Application for PCTC Program CQ.* PCTC Program cooperatives must submit a complete application by November 1 to receive PCTC Program CQ and identify the following:

(i) PCTC Program cooperative identification, including but not limited to the name of the cooperative and the taxpayer identification number;

(ii) PCTC Program QS holders and ownership documentation;

(iii) PCTC Program cooperative member vessels and LLP licenses;

(iv) PCTC Program cooperative associated processors;

(v) Vessels on which the CQ issued to the PCTC Program cooperative will be used;

(vi) Certification of cooperative representative;

(vii) Attach a copy of the membership agreement or contract that includes the following terms:

(A) How the cooperative intends to catch its PCTC Program CQ;

(B) The obligations of QS holders who are members of a PCTC Program cooperative to ensure the full payment of PCTC Program fee liabilities that may be due;

(C) How cooperatives monitor and report leasing activity into GOA fisheries; and

(D) A cooperative intending to harvest any amount of the CQ set-aside must provide the cooperative's plan for coordinating harvest and delivery of the CQ set-aside with an Aleutian Islands shoreplant as defined in § 679.2.

(viii) Each year, all cooperatives must establish an inter-cooperative agreement. This inter-cooperative agreement must be provided as part of each annual cooperative application and is required before NMFS will issue CQ. The inter-cooperative agreement must establish how the cooperatives intend to harvest the CQ set-aside in years when it applies and ensure harvests in the BS do not exceed the minimum set-aside as specified in § 679.132(a)(4)(i).

(b) *Allocations of PCTC Program Pacific cod.*

(1) *General.* Each calendar year, the Regional Administrator will determine the amount of the BSAI trawl catcher vessel sector's Pacific cod A and B season allocations that will be assigned to the PCTC Program as follows:

(i) *Incidental catch allowance (ICA).* For the A and B seasons, the Regional Administrator will establish an ICA to account for projected incidental catch of Pacific cod by trawl catcher vessels engaged in directed fishing for groundfish other than PCTC Program Pacific cod.

(ii) *Directed fishing allowance (DFA).* The remaining trawl catcher vessel sector's Pacific cod A and B season allocations are established as a DFA for the PCTC Program.

(2) *Calculation.*

(i) *Determination of Pacific cod trawl catcher vessel TAC allocated to the PCTC Program.* NMFS will determine the Pacific cod trawl catcher vessel TAC in a calendar year in the annual harvest specification process in § 679.20.

(ii) *Annual apportionment of Pacific cod trawl catcher vessel TAC.* The annual apportionment of Pacific cod in the A and B seasons between the PCTC Program DFA and the ICA in a given calendar year is established in the annual harvest specifications.

(3) *Allocations of Pacific Cod DFA to PCTC Program.*

(i) *Harvester Percentage of DFA.* NMFS will assign 77.5 percent of the PCTC Program DFA to the QS attached to LLP licenses assigned to PCTC Program cooperatives. Each LLP license's QS units will correspond to a portion of the DFA according to the following equation: (LLP license QS units/(sum of all LLP license QS units)) × (.775 × DFA).

(ii) *Processor Percentage of DFA.* NMFS will assign 22.5 percent of the PCTC Program DFA to the QS attached to PCTC Program QS Permits assigned to PCTC Program cooperatives. Each QS Permit's QS units will correspond to a portion of the DFA according to the following equation: (PCTC Program QS permit QS units/(sum of all PCTC Program QS permit QS units)) × (.225 × DFA).

(4) *Allocation of CQ to PCTC Program cooperatives—*

(i) *General.* Annual CQ will be issued to each cooperative by NMFS based on the aggregate QS attached to LLP licenses and PCTC Program QS permits that are assigned to the cooperative. NMFS will issue CQ by A and B season and cooperatives will ensure the seasonal limits are not exceeded. Unused A season CQ may be rolled over to the B season. Annual CQ may be harvested from either BS or AI subareas.

(ii) *CQ allocation for PCTC Program.* The amount of CQ that is assigned to a PCTC Program cooperative is expressed algebraically as follows:

CQ derived from QS assigned to LLP holders = [(.775 × DFA) × (Total LLP license QS units assigned to that cooperative/sum of all LLP license QS units)]

CQ derived from QS assigned to FFP and FPP holders = [(.225 × DFA) × (Total PCTC Program Permit QS units assigned to that cooperative/

sum of all PCTC Program QS permit QS units)]

The total CQ assigned to that cooperative = CQ derived from LLP license holders + CQ derived from PCTC Program QS permit holders

(iii) *Issuance of CQ.* A and B season trawl catcher vessel Pacific cod sector DFAs will be allocated to cooperatives as CQ. Annual CQ for each PCTC Cooperative will be issued separately as A and B season CQ.

(iv) *AI set-aside.* When in effect, the AI set-aside will be established annually as specified further at § 679.132.

(c) *Halibut PSC.*

(1) *Halibut PSC limit for the PCTC Program.* The overall halibut PSC limit for the PCTC Program for each calendar year is specified in the harvest specifications pursuant to the procedures specified at § 679.21(b). That halibut PSC limit is then assigned to cooperatives pursuant to paragraph (a)(1)(i) of this section.

(i) Multiply the halibut PSC limit apportioned to the BSAI trawl limited access sector's Pacific cod fishery category by 98 percent, which yields the halibut PSC apportioned to the trawl catcher vessel sector. The remaining 2 percent is apportioned to the AFA catcher/processor sector as specified in § 679.21(b)(4).

(ii) Assign 95 percent of the trawl catcher vessel sector's halibut PSC limit to the A and B seasons and 5 percent to the C season.

(iii) Each year after apportioning halibut PSC to the trawl catcher vessel sector for the A and B season, apply one of the following reductions to the A and B season trawl catcher vessel halibut PSC limit to determine the overall PCTC Program halibut PSC limit:

(A) In the first year of the PCTC Program, reduce the A and B season halibut PSC limit by 12.5 percent.

(B) In the second year, and each year thereafter, reduce the A and B season halibut PSC limit by 25 percent.

(2) *Halibut PSC assigned to each PCTC Program cooperative.* For each calendar year, the amount of halibut PSC assigned to a cooperative is determined by the following procedure and the amount will be specified on the CQ permit:

(i) Divide the amount of PCTC Program CQ units assigned to each PCTC Program cooperative by the amount of CQ allocated to all cooperatives. This yields the percentage of PCTC Program CQ units held by each cooperative.

(ii) Multiply the overall PCTC Program halibut PSC limit by the percentage of the PCTC Program CQ assigned to a cooperative. This yields the amount of halibut PSC issued to that cooperative as CQ.

(3) *Use of halibut PSC in the PCTC Program.* Halibut PSC limits assigned to the PCTC Program may only be used by the members of the PCTC Program. A halibut PSC limit is assigned to the CQ permit issued to a cooperative for use while harvesting CQ in the BSAI. Any halibut PSC used by a cooperative must be deducted from the amount of halibut PSC on its CQ permit. A halibut PSC limit on a CQ permit may be used only by the members of the cooperative to which it is assigned. Halibut PSC limits for cooperatives are not subject to seasonal apportionment under § 679.21. Halibut PSC limits are issued to the PCTC Program for the duration of the A and B seasons. Halibut PSC limits may be reapportioned to the C season.

(d) *Allocations of crab PSC.*

(1) *Crab PSC limits for the PCTC Program.* The overall crab PSC limit for the PCTC Program for each calendar year is specified in the harvest specifications pursuant to the procedures specified at § 679.21(e). That crab PSC limit is then assigned to cooperatives with CQ pursuant to paragraph (a)(1)(i) of this section.

(i) Multiply the crab PSC limit apportioned to the BSAI trawl limited access sector's Pacific cod fishery category by 90.6 percent, which yields the percentage of crab PSC apportioned to the trawl catcher vessel sector. The remaining 9.4 percent goes to the AFA catcher/processor sector as specified in § 679.21(b)(4).

(ii) Assign 95 percent of the trawl catcher vessel sector's crab PSC limit to the A and B seasons and 5 percent to the C season.

(iii) Reduce the A and B season trawl catcher vessel crab PSC limit by 35 percent to determine the overall PCTC Program crab PSC limit.

(2) *Crab PSC assigned to each PCTC Program cooperative.* For each calendar year, the amount of crab PSC limit assigned to a cooperative is determined by the following procedure and the amount will be specified on the CQ permit:

(i) Divide the amount of PCTC Program CQ assigned to each PCTC Program cooperative by the total CQ assigned to all cooperatives. This yields the percentage of PCTC Program CQ held by that cooperative.

(ii) Multiply the overall PCTC Program crab PSC limit by the percentage of the PCTC Program CQ pool assigned to a cooperative. This yields the crab PSC limit issued to that cooperative as CQ.

(3) *Use of crab PSC in the PCTC Program.* Crab PSC limits assigned to the PCTC Program may only be used by the members of the PCTC Program. A crab PSC limit is assigned to the CQ permit issued to a PCTC Program cooperative for use while harvesting CQ in the BSAI. Any crab PSC used by a cooperative must be deducted from the amount of crab PSC limit on its CQ permit. A crab PSC limit on a CQ permit may be used only by the members of the cooperative to which it is assigned. Crab PSC limits for cooperatives are not subject to seasonal apportionment under § 679.21. Crab PSC limits are issued to the PCTC Program for the duration of the A and B seasons. Crab PSC limits may be reapportioned to the C season.

(e) *Transfer of PSC Limits.* Halibut and crab PSC limits are transferable between cooperatives according to the same rules established for CQ at § 679.130(g)(4).

(f) *Non-allocated Groundfish species.* The PCTC Program allocations are for directed fishing for Pacific cod by trawl catcher vessels. All groundfish species not allocated to PCTC Program cooperatives are managed to the maximum retainable amounts (MRAs), as described under § 679.20(e).

(g) *Rollover of Pacific cod.* If, after June 10, the Regional Administrator determines that reallocating a portion of the Pacific cod ICA or DFA from the PCTC Program to the BSAI trawl limited access sector C season is appropriate, the Regional Administrator may do so through notification in the **Federal Register** consistent with regulations at § 679.20(a)(7)(iii).

(h) *Rollover of PSC to the C Season.* If, after June 10, the Regional Administrator determines that reallocating a portion of the halibut or crab PSC limits from the PCTC Program to the BSAI trawl limited access sector C season is appropriate, the Regional Administrator may do so through notification in the **Federal Register** consistent with regulations at § 679.91(f)(4) and (5).

(i) *Process for inter-cooperative transfer of PCTC Program CQ.* NMFS will process an application on eFish for an online inter-cooperative transfer of CQ, including PSC, provided that all information is completed by the transferor and transferee, with all applicable fields accurately filled in, and all required documentation is provided.

(j) *PCTC Program cooperative*—

(1) *General.* This section governs the formation and operation of PCTC Program cooperatives. The regulations in this section apply only to PCTC Program cooperatives that have formed

for the purpose of applying for and fishing with CQ issued annually by NMFS. PCTC Program cooperatives and cooperative members are responsible for ensuring the conduct of cooperatives is consistent with any relevant state or Federal antitrust laws. Membership in a cooperative is voluntary. No person may be required to join a cooperative. Any LLP license holder with PCTC Program QS may join a PCTC Program cooperative and assign their QS to that cooperative. Members may leave a cooperative, but any CQ derived from the QS held by that member will remain with that cooperative for the duration of the calendar year.

(2) *Legal and organizational requirements.* A PCTC Program cooperative must meet the following legal and organizational requirements before it is eligible to receive CQ:

(i) Each PCTC Program cooperative must be formed as a partnership, corporation, or other legal business entity that is registered under the laws of one of the 50 states or the District of Columbia;

(ii) Each PCTC Program cooperative must appoint an individual as the designated representative to act on the cooperative's behalf and to serve as a contact point for NMFS for questions regarding the operation of the cooperative. The designated representative may be a member of the cooperative, or some other individual designated by the cooperative to act on its behalf;

(iii) Each PCTC Program cooperative must submit a timely and complete application for CQ; and

(iv) Each PCTC Program cooperative must meet the mandatory requirements established in paragraph (j)(3) of this section applicable to that PCTC Program cooperative.

(3) *Mandatory requirements.* The following table describes the requirements to form a PCTC Program cooperative:

(i) Who may join or associate with a PCTC Program cooperative?	Any PCTC Program QS holder named on a timely and complete application for CQ for that calendar year that is approved by NMFS. Individuals who are not QS holders may be employed by, or serve as the designated representative of, a cooperative, but cannot be members of the cooperative. Any processor may associate with a cooperative.
(ii) What is the minimum number of LLP licenses required to form a cooperative?	A minimum of three LLP licenses are needed to form a cooperative.
(iii) How many unique LLP license holders are required to form a cooperative?	There is no minimum number of unique LLP license holders required to form a cooperative.
(iv) Is there a minimum amount of PCTC Program QS units that must be assigned to a PCTC Program cooperative?	No.
(v) What is allocated to the PCTC Program cooperatives?	A and B season CQ for Pacific cod, halibut PSC limits, and crab PSC limits, based on the total QS units assigned to the cooperative by its members.
(vi) Is this CQ an exclusive catch and use privilege?	Yes, the members of the cooperative have an exclusive privilege to collectively catch and use this CQ, or a cooperative can transfer all or a portion of this CQ to another cooperative.
(vii) Is there a period in a calendar year during which PCTC Program cooperative vessels may catch Pacific cod?	Yes, any cooperative vessel may harvest PCTC CQ during the during the A and B seasons specified at § 679.130(a)(2).
(viii) Can any vessel catch a PCTC Program cooperative's Pacific cod?	No, only vessels that are listed on a PCTC Program cooperative's application for CQ may catch Pacific cod assigned to that cooperative.
(ix) Can a member of a PCTC Program cooperative transfer CQ individually without the approval of the other members of the cooperative?	No, only the designated representative of the cooperative, and not individual members, may transfer CQ to another cooperative, and only if that transfer is approved by NMFS.
(x) Are GOA sideboard limits assigned to specific persons or PCTC Program cooperatives?	Existing sideboard limits apply to individual vessels or LLP license holders, not cooperatives.
(xi) Can PCTC Program QS assigned to an LLP license or QS held by processors be assigned to more than one PCTC Program cooperative in a calendar year?	QS assigned to an LLP license may be assigned to only one cooperative in a calendar year. Multiple QS permits or LLP licenses held by a single person are not required to be assigned to the same cooperative. A processor may associate with more than one cooperative and any QS held by the processor would be divided between the associated cooperatives in the same proportion as the CQ derived from the LLP licenses.
(xii) Which members may catch the PCTC Program cooperative's CQ?	Use of a cooperative's CQ is determined by the cooperative contract signed by its members. Any violations of this contract by a cooperative member may be subject to civil claims by other members of the cooperative.
(xiii) Does a PCTC Program cooperative need a membership agreement or contract?	Yes, a cooperative must have a membership agreement or contract. A copy of this agreement or contract must be submitted to NMFS with the application for CQ. The membership agreement or contract must specify: (A) How the cooperative intends to catch its CQ; and (B) The obligations of QS holders, who are members of a cooperative, to ensure the full payment of fee liabilities that may be due.
(xiv) What happens if the PCTC Program cooperative membership agreement or contract is modified during the fishing year?	A copy of the amended membership agreement or contract must be sent to NMFS in accordance with § 679.131.
(xv) What happens if the cooperative exceeds its CQ amount?	A cooperative is not authorized to catch Pacific cod or use halibut or crab PSC limits in excess of the amount on its CQ permit. Exceeding a CQ permit is a violation of the regulations. Each member of the cooperative is jointly and severally liable for any violations of the PCTC Program regulations while fishing under the authority of a CQ permit. This liability extends to any persons who are hired to catch or receive Pacific cod assigned to a cooperative.
(xvi) Is there a limit on how much CQ a PCTC Program cooperative may hold or use?	No, but each QS holder is subject to ownership caps, and a vessel may be subject to vessel use caps. See § 679.133.
(xvii) Is there a limit on how much Pacific cod a vessel may catch?	Yes, generally a vessel may not catch more than 5 percent of the Pacific cod assigned to the PCTC Program for that calendar year. See § 679.133 for use cap provisions.

(xviii) Are there any special reporting requirements?	The designated representative of the cooperative may submit an annual PCTC Program cooperative report to the North Pacific Fishery Management Council.
(xix) Is there a requirement that a PCTC Program cooperative pay PCTC Program cost recovery fees?	Yes, see § 679.135 for the provisions that apply. PCTC Program cooperatives are responsible for paying cost recovery fees.
(xx) Is there any restriction on deliveries of PCTC Program CQ?	Sometimes, if the CQ AI set-aside is in effect for the fishing year as specified in § 679.132. Cooperatives must establish, through an inter-cooperative agreement, how 12 percent of the BSAI A season CQ will be set aside for delivery to an Aleutian Islands shoreplant.

(4) *Successors-in-interest.* If a member of a PCTC Program cooperative dies (in the case of an individual) or dissolves (in the case of a business entity), the CQ derived from the QS assigned to the cooperative for that year from that person remains under the control of the cooperative for the duration of that calendar year as specified in the cooperative contract. Each cooperative is free to establish its own internal procedures for admitting a successor-in-interest during the fishing season due to the death or dissolution of a cooperative member.

§ 679.132 Aleutian Islands set-aside provisions in the PCTC Program.

(a) *Aleutian Islands set-aside provisions in the PCTC Program.*

(1) *Calculation of the Aleutian Islands Pacific cod non-CDQ ICA and DFA.* Each year, during the annual harvest specifications process set forth at § 679.20(c), the Regional Administrator will specify the AI Pacific cod non-CDQ ICA and DFA from the AI Pacific cod non-CDQ TAC and specify the AI set-aside as follows.

(2) *Aleutian Islands Pacific cod non-CDQ ICA.* The AI Pacific cod non-CDQ ICA will be deducted from the aggregate portion of Pacific cod TAC annually allocated to the non-CDQ sectors identified in § 679.20(a)(7)(ii)(A).

(3) *Aleutian Islands Pacific cod non-CDQ DFA.* The AI Pacific cod non-CDQ DFA will be the amount of the AI Pacific cod TAC remaining after subtraction of the AI Pacific cod CDQ reserve and the AI Pacific cod non-CDQ ICA. The Regional Administrator will specify the AI set-aside in either of the following ways:

(i) The AI set-aside is 12 percent of the PCTC Program A season CQ and is in effect during the A and B seasons.

(ii) If the AI non-CDQ TAC is below 12 percent of the BSAI PCTC Program A season CQ, then the AI set-aside will be set equal to the AI non-CDQ DFA. When the AI set-aside is in effect and set equal to the AI non-CDQ DFA, directed fishing for Pacific cod in the AI may only be conducted by PCTC Program vessels that deliver their catch of AI Pacific cod to an Aleutian Islands shoreplant. After June 10, the Regional Administrator may open directed fishing for non-CDQ Pacific cod for other sectors.

(4) *Calculation of the Aleutian Islands Set-aside.* Each year, during the annual harvest specifications process set forth at § 679.20(c), the Regional Administrator will specify the AI set-aside, which will be an amount of Pacific cod equal to the lesser of either the AI Pacific cod non-CDQ DFA or 12 percent of the BSAI PCTC Program A season CQ.

(b) *Annual notification of intent to process Aleutian Islands Pacific cod –*

(1) *Submission of notification.* The provisions of this section will apply if either a representative of the City of Adak or the City of Atka submits to the Regional Administrator a timely and complete notification of its intent to process PCTC Program Pacific cod during the upcoming fishing year.

(2) *Submission method and deadline.* The notification of intent to process PCTC Program Pacific cod for the upcoming fishing year must be submitted in writing to the Regional Administrator by a representative of the City of Adak or the City of Atka no later than October 15 of each year in order for the provisions of this section to apply during the upcoming fishing year. Notifications of intent received later than October 15 may not be accepted by the Regional Administrator.

(3) *Contents of notification.* A notification of intent to process PCTC Program Pacific cod for the upcoming fishing year must contain the following information:

(i) Date of submission,

(ii) Name of city,

(iii) Statement of intent to process PCTC Program Pacific cod,

(iv) Identification of the fishing year during which the city intends to process PCTC Program Pacific cod,

(v) Contact information for the representative of the city, and

(vi) Documentation of authority to represent the City of Adak or the City of Atka.

(4) *NMFS confirmation and notification.* On or before November 30, the Regional Administrator will notify the representative of the City of Adak or the City of Atka, confirming receipt of their official notification of intent to process PCTC Program Pacific cod. Then, NMFS will announce through notice in the **Federal Register** whether the AI set-aside will be in effect for the upcoming fishing year.

(5) *AI Set-aside Cooperative Provisions.* If the representative of the City of Adak or the City of Atka submits a timely and complete notification of intent to process in accordance of this section, then the following provisions will apply for the fishing year following the notification:

(i) The PCTC Program cooperative(s) are required to set-aside an amount of CQ calculated by the Regional Administrator pursuant to paragraph (a)(4) of this section for delivery to an Aleutian Islands shoreplant as defined at § 679.2.

(ii) All cooperatives must enter into an inter-cooperative agreement that describes how the AI set-aside will be administered by the cooperatives to ensure that the PCTC Program harvests in the BS do not exceed the amount of the set-aside for delivery to an Aleutian Islands shoreplant. This inter-cooperative agreement must establish how the cooperatives intend to harvest the AI set-aside when it applies. This inter-cooperative agreement must be provided as part of the annual cooperative application as specified in § 679.131(a)(4) and is required before NMFS can issue CQ.

(iii) The inter-cooperative agreement must establish how cooperatives would ensure that trawl catcher vessels less than 60 feet LOA assigned to an LLP license with a transferable AI trawl endorsement have the opportunity to harvest 10 percent of the AI set-aside for delivery to an Aleutian Islands shoreplant.

(c) *PCTC Program A Season Set-Aside Limitations.*

(1) If the Regional Administrator has approved a notification of intent to process, vessels authorized under the PCTC Program shall not harvest the amount of the AI set-aside in the BS subarea.

(2) PCTC Program cooperatives may not deliver more than the PCTC A season CQ minus the AI set-aside established under § 679.132 to processors in the BS subarea when the AI set-aside is in effect.

(3) If an Aleutian Islands shoreplant is not able to receive deliveries of Pacific cod under the PCTC Program, then the

City of Adak or the City of Atka may withdraw their annual notification of intent to process prior to the end of B season.

(4) As soon as practicable, if the Regional Administrator determines that Aleutian Islands shoreplants authorized under the PCTC Program will not process the entire AI set-aside, the Regional Administrator may remove the delivery requirement for some or all of the projected unused AI set-aside to PCTC cooperatives in proportion to the amount of CQ that each PCTC cooperative received in the initial allocation of CQ for the remainder of the A and B season by inseason notification published in the **Federal Register**.

(i) If the City of Adak or the City of Atka withdraws its intent to process, the Regional Administrator will release the unused AI set-aside to PCTC cooperatives in proportion to the amount of CQ that each PCTC cooperative received in the initial allocation of CQ for that calendar year by inseason notification published in the **Federal Register**.

(ii) Following a withdrawal of an intent to process, the Regional Administrator will announce through notice in the **Federal Register** that the AI set-aside will not be in effect for the remainder of the PCTC Program fishing year.

§ 679.133 PCTC Program use caps and sideboard limits.

(a) *Ownership and use caps.* (1) *General.*

(i) Ownership caps limit the amount of QS that may be owned by an eligible harvester or eligible processor and their affiliates. Use caps limit the amount of CQ that may be harvested by a vessel or received and processed by a processor.

(ii) Use caps do not apply to halibut or crab PSC CQ.

(iii) Ownership and use may not be exceeded unless the entity subject to the cap is specifically allowed to exceed a cap according to the criteria established under paragraph (a)(6) of this section.

(iv) All QS ownership caps are a percentage of the initial QS pool established by NMFS in § 679.130(e).

(v) The CQ processing use cap is a percentage of the total amount of CQ issued to cooperatives during a calendar year.

(vi) The vessel use cap is a percentage of the amount of CQ assigned to the PCTC Program during a calendar year.

(2) *Harvester ownership cap.* A person may not individually or collectively own more than 5 percent of the QS initially assigned to harvesters unless that person qualifies for an exemption to this ownership cap under paragraph (a)(6) of this section based on their qualifying catch history. Processor-issued QS does not count toward this ownership cap.

(3) *Vessel use cap.* A catcher vessel may not harvest an amount of CQ greater than 5 percent of the CQ issued to the PCTC Program during a calendar year unless that vessel qualifies for an exemption to this use cap under paragraph (a)(6) of this section based on their qualifying catch history.

(4) *Processor ownership cap.* A person may not individually or collectively own more than 20 percent of the QS initially assigned to processors unless that person qualifies for an exemption to this ownership cap under paragraph (a)(6) of this section based on their qualifying processing history.

(5) *Processing use cap.* A processor, at the firm or company level, may not process more than 20 percent of the CQ assigned to the PCTC Program during a calendar year unless that processor qualifies for an exemption to this use cap under paragraph (a)(6) of this section based on their qualifying processing history. The amount of CQ that is received by a PCTC Program processor is calculated based on the sum of all landings made with CQ received or processed by that processor and the CQ received or processed by any person affiliated with that processor as that term is defined in § 679.2.

(6) *Ownership exemptions.*

(i) *Harvester ownership cap exemption.* A person may receive an initial allocation of Pacific cod QS in excess of the harvester ownership cap. This exemption is non-transferrable.

(ii) *Processor ownership cap exemption.* A person may receive an initial allocation of Pacific cod QS in excess of the processor ownership cap. This exemption is non-transferrable.

(iii) *Vessel use cap exemption.* A vessel designated on an LLP that received an initial allocation of Pacific cod QS in excess of the harvester ownership cap may harvest CQ in excess of the vessel use cap up to an amount of CQ proportional to the amount of CQ resulting from QS assigned to the LLP. This exemption is non-transferrable.

(iv) *Processor use cap exemption.* A processor that received an initial allocation of Pacific cod QS in excess of the processor ownership cap may process more than 20 percent of PCTC Program CQ during a calendar year up to an amount of CQ proportional to the ratio of QS held by the processor over the total amount of QS held by processors. This exemption is non-transferrable.

(7) *Transfer limitations.* An eligible harvester that receives an initial allocation of Pacific cod QS that exceeds the ownership cap listed in paragraph (a)(2) of this section shall not receive any Pacific cod QS by transfer unless and until the eligible harvester's holdings of Pacific cod QS in the PCTC Program are reduced to an amount below the use cap specified in paragraph (a) of this section.

(b) *Sideboard limits—General.* The regulations in this section restrict the holders of LLP licenses issued PCTC Program QS from using the increased flexibility provided by the PCTC Program to expand their level of participation in GOA groundfish fisheries.

(1) *Sideboard limit restrictions for LLP licenses authorizing AFA non-exempt catcher vessels.* LLP licenses that authorize AFA non-exempt catcher vessels will be subject to the sideboard limitations specified at § 679.64(b)(4)(i).

(2) *At-Sea Processing Sideboard Limit.* A sideboard limit will be specified on each LLP license with a BSAI Pacific cod trawl mothership endorsement. Each LLP license with a BSAI Pacific cod trawl mothership endorsement may receive PCTC Program CQ deliveries from a catcher vessel not to exceed 125 percent of a catcher/processor's processing history as defined in § 679.130 or 125 percent of the catch history from LLP licenses that are owned (in excess of 75 percent) directly or indirectly by the owner of a catcher/processor eligible for the PCTC Program, up to 125 percent of their processing history.

§ 679.134 PCTC Program permits, catch monitoring, catch accounting, and recordkeeping and reporting.

(a) *Permits.* For permit information, please see § 679.4(q).

(b) *Catch monitoring requirements for PCTC Program catcher vessels.* The owner or operator of a catcher vessel must ensure the vessel complies with the observer coverage requirements described in § 679.51(a)(2) at all times the vessel is participating in a cooperative.

(c) *Catch monitoring requirements for motherships receiving unsorted codends from a PCTC Program catcher vessel.* (1) *Catch weighing.* All catch, except halibut sorted on deck by vessels participating in the halibut deck sorting described at § 679.120, must be weighed on a NMFS-approved scale in compliance with the scale requirements at § 679.28(b). Each haul must be weighed separately and all catch must be made available for sampling by an observer.

(2) *Additional catch monitoring requirements.* Comply with catch monitoring requirements specified at§ 679.93(c).

(d) *Catch monitoring requirements for shoreside processors.* All groundfish landed by catcher vessels described in § 679.51(a)(2) must be sorted, weighed on a scale approved by the State of Alaska as described in § 679.28(c), and be made available for sampling by an observer, NMFS staff, or any individual authorized by NMFS. Any of these persons must be allowed to test any scale used to weigh groundfish to determine its accuracy.

(e) *Catch accounting.* (1) *Pacific cod.* All Pacific cod harvests by a vessel that is named on an LLP license assigned to a PCTC Program cooperative and fishing under a CQ permit will be debited against the CQ for that cooperative during the PCTC Program fishing seasons as defined in § 679.130(a)(2).

(2) *PCTC Program halibut and crab PSC.* All halibut and crab PSC in the PCTC Program used by a vessel that is named on an LLP license assigned to a cooperative and fishing under a CQ permit will be debited against the CQ for that cooperative during the PCTC Program fishing seasons as defined in § 679.130(a)(2).

(3) *Groundfish sideboard limits.* All groundfish harvests in the BSAI and GOA that are subject to a sideboard limit for that groundfish species as described under § 679.133(c), except groundfish harvested by a vessel when participating in the Central GOA Rockfish Program, will be debited against the applicable sideboard limit.

(f) *Recordkeeping and reporting.* The owners and operators of catcher vessels and processors authorized as participants in the PCTC Program must comply with the applicable recordkeeping and reporting requirements of this section and must assign all catch to a PCTC Program cooperative as applicable at the time of catch or receipt of Pacific cod. All owners of catcher vessels and processors authorized as participants in the PCTC Program must ensure that their designated representatives or employees comply with all applicable recordkeeping and reporting requirements.

(1) *Logbook.*

(i) *DFL.* Operators of catcher vessels participating in the PCTC Program fishery must maintain a daily fishing logbook for trawl gear as described in § 679.5.

(ii) *ELB.* Operators of a catcher/processor designated on an LLP license with a BSAI Pacific cod trawl mothership endorsement must use a combination of NMFS-approved catcher/processor trawl gear ELB and eLandings to record and report groundfish and PSC information as described in § 679.5 to record PCTC Program landings and production.

(2) *eLandings.* Managers of shoreside processors that receive Pacific cod in the PCTC Program must use eLandings or NMFS-approved software as described in § 679.5(e) to record PCTC Program landings and production.

(3) *Production reports.* Operators of a catcher/processor designated on an LLP license with a BSAI Pacific cod trawl mothership endorsement that receives and purchases landings of PCTC CQ must submit a production report as described in § 679.5(e)(10).

(4) *Product transfer report (PTR), processors.* Operators of a catcher/processor designated on an LLP license with a BSAI Pacific cod trawl mothership endorsement and managers of shoreside processors that receive and purchase landings of PCTC Program CQ must submit a PTR as described in § 679.5(g).

(5) *Vessel monitoring system (VMS) requirements.* Operators of catcher vessels assigned to a PCTC cooperative or that are subject to sideboard limits detailed in § 679.134 must use functioning VMS equipment as described at § 679.28(f) at all times when operating in a reporting area off Alaska during the A and B season.

(6) *PCTC Program cost recovery fee submission* (See § 679.135).

(7) *Pacific cod Ex-vessel Volume and Value Report.* A processor that receives and purchases landings of PCTC CQ must submit annually to NMFS a complete Pacific cod Ex-vessel Volume and Value Report, as described in § 679.5(u) for each reporting period for which the PCTC processor receives PCTC CQ.

§ 679.135 PCTC Program cost recovery.

(a) *Cost recovery fees.*

(1) *Responsibility.* Each PCTC Program cooperative must comply with the requirements of this section.

(i) Subsequent transfer of CQ or QS held by PCTC cooperative members does not affect the cooperative's liability for noncompliance with this section.

(ii) Non-renewal of a CQ permit does not affect the cooperative's liability for noncompliance with this section.

(iii) Changes in the membership in a PCTC cooperative, such as members joining or departing during the relevant year, or changes in the amount of QS holdings of those members does not affect the cooperative's liability for noncompliance with this section.

(2) *Fee collection.* PCTC Program cooperatives that receive CQ are responsible for submitting the cost recovery payment for all CQ landings made under the authority of their CQ permit.

(3) *Payment.*

(i) *Payment due date.* A cooperative representative must submit any cost recovery fee liability payment(s) no later than August 31 following the calendar year in which the CQ landings were made.

(ii) *Payment recipient.* Make electronic payment payable to NMFS.

(iii) *Payment address.* Submit payment and related documents as instructed on the NMFS Alaska Region website as defined at § 679.2.

(iv) *Payment method.* Payment must be made electronically in U.S. dollars using an approved payment method available on the payment website.

(b) *Pacific cod standard ex-vessel value determination and use.* NMFS will use the standard prices calculated for Pacific cod based on information provided in the Pacific Cod Ex-vessel Volume and Value Report described at § 679.5(u)(1) from the previous calendar year.

(c) *PCTC Program fee percentage.*

(1) *Established percentage.* The fee percentage is the amount as determined by the factors and methodology described in paragraph (c)(2) of this section. This amount will be announced by publication in the **Federal Register**. This amount must not exceed 3.0 percent of the gross ex-vessel value pursuant to 16 U.S.C. 1854(d)(2)(B).

(2) *Calculating fee percentage value.* Each year NMFS shall calculate and publish the fee percentage according to the following factors and methodology:

(i) *Factors.* NMFS must use the following factors to determine the fee percentage:

(A) The catch to which the PCTC Program cost recovery fee will apply;

(B) The ex-vessel value of that catch; and

(C) The costs directly related to the management, data collection, and enforcement of the PCTC Program.

(ii) *Methodology.* NMFS must use the following equations to determine the fee percentage:

$$100 \times DPC/V$$

where:

DPC = the direct program costs for the PCTC Program for the previous calendar year with any adjustments to the account from payments received in the previous year.

V = total of the standard ex-vessel value of the catch subject to the PCTC cost recovery fee liability for the current year.

(3) *Publication.*

(i) *General.* Following the fishing season in which the PCTC CQ landings were made, NMFS shall calculate the fee percentage based on the calculations described in paragraph (c)(2) of this section.

(ii) *Effective period.* The calculated fee percentage is applied to PCTC CQ landings made in the previous calendar year.

(4) *Applicable percentage.* The CQ permit holder must use the fee percentage applicable at the time a PCTC landing is debited from a CQ allocation to calculate the cost recovery fee liability for any retroactive payments for CQ landed.

(5) *Fee liability determination for a cooperative.*

(i) All cooperatives are subject to a fee liability for any CQ debited from a CQ allocation during a calendar year.

(ii) The Pacific cod fee liability assessed to a cooperative is based on the proportion of the standard ex-vessel value of Pacific cod debited from a CQ holder relative to all cooperatives during a calendar year as determined by NMFS.

(iii) NMFS will provide a fee liability summary letter to all cooperative representatives by no later than August 1 of each year. The summary will explain the fee liability determination including the current fee percentage, details of CQ pounds debited from CQ allocations by permit, species, date, and prices.

(d) *Underpayment of fee liability.*

(1) Pursuant to § 679.131, no cooperative will receive any CQ unless that cooperative has made full payment of cost recovery liability at the time it applies for CQ.

(2) If a cooperative representative fails to submit full payment for PCTC Program cost recovery fee liability by the date described in paragraph (a)(3) of this section:

(i) At any time thereafter the Regional Administrator may send an IAD to the cooperative stating the amount of the cooperative's estimated fee liability that is past due and requesting payment. If payment is not received by the 30th day after the date on the IAD, the agency may pursue collection of the unpaid fees.

(ii) The Regional Administrator may disapprove any application to transfer CQ to or from the cooperative in accordance with § 679.130.

(iii) No CQ permit will be issued to that cooperative for that following calendar year and the Regional Administrator may continue to prohibit issuance of a CQ permit for any subsequent calendar years until NMFS receives the unpaid fees.

(iv) No CQ will be issued based on the QS held by the members of that cooperative to any other CQ permit for that following calendar year.

(e) *Over payment.* Payment submitted to NMFS in excess of the annual PCTC Program cost recovery fee liability for a cooperative will be credited against the CQ permit holder's future cost recovery fee liability unless the CQ permit holder requests the agency refund the over payment. Payment processing fees may be deducted from any fees returned to the CQ permit holder.

(f) *Appeals.* A cooperative who receives an IAD for incomplete payment of a fee liability may appeal the IAD pursuant to 15 CFR part 906.

(g) *Annual report.* Each year, NMFS will publish a report describing the PCTC Program cost recovery fee program.

■ 12. Revise Table 40 to Part 679—BSAI Halibut PSC Sideboard Limits for AFA Catcher/Processors and AFA Catcher Vessels, to read as follows:

TABLE 40 TO PART 679—BSAI HALIBUT PSC SIDEBOARD LIMITS FOR AFA CATCHER/PROCESSORS AND AFA CATCHER VESSELS

In the following target species categories as defined in § 679.21(b)(1)(iii) and (e)(3)(iv) . . .	The AFA catcher/processor halibut PSC sideboard limit in metric tons is . . .	The AFA catcher vessel halibut PSC sideboard limit in metric tons is . . .
All target species categories	286	N/A
Pacific cod trawl	N/A	N/A
Pacific cod hook-and-line or pot	N/A	2
Yellowfin sole	N/A	101
Rock sole/flathead sole/"other flatfish" [1]	N/A	228
Turbot/Arrowtooth/Sablefish	N/A	0
Rockfish [2]	N/A	2
Pollock/Atka mackerel/"other species"	N/A	5

■ 13. Revise Table 56 to Part 679—GOA Species and Species Groups for Which Directed Fishing for Sideboard Limits by Non-Exempt AFA Catcher Vessels is Prohibited, to read as follows:

TABLE 56 TO PART 679—GOA SPECIES AND SPECIES GROUPS FOR WHICH DIRECTED FISHING FOR SIDEBOARD LIMITS BY NON-EXEMPT AFA CATCHER VESSELS IS PROHIBITED

Species or species group	Management or regulatory area and processing component (if applicable)
Pollock	Southeast Outside District, Eastern GOA.
Pacific cod	Eastern GOA, inshore component.
	Eastern GOA, offshore component.
Sablefish	Western GOA.
	Central GOA.
	Eastern GOA.
Shallow-water flatfish	Western GOA.
	Eastern GOA.
Deep-water flatfish	Western GOA.
	Central GOA.

TABLE 56 TO PART 679—GOA SPECIES AND SPECIES GROUPS FOR WHICH DIRECTED FISHING FOR SIDEBOARD LIMITS BY NON-EXEMPT AFA CATCHER VESSELS IS PROHIBITED—Continued

Species or species group	Management or regulatory area and processing component (if applicable)
Rex sole	Eastern GOA.
	Western GOA.
Arrowtooth flounder	Eastern GOA.
	Western GOA.
Flathead sole	Eastern GOA.
	Western GOA.
Pacific ocean perch	Eastern GOA.
	Western GOA.
Northern rockfish	Eastern GOA.
	Western GOA.
Shortraker rockfish	Western GOA.
	Central GOA.
	Eastern GOA.
Dusky rockfish	Western GOA.
	Central GOA.
	Eastern GOA.
Rougheye rockfish	Western GOA.
	Central GOA.
	Eastern GOA.
Demersal shelf rockfish	Southeast Outside District.
Thornyhead rockfish	Western GOA.
	Central GOA.
	Eastern GOA.
Other rockfish	Central GOA.
	Eastern GOA.
Atka mackerel	GOA.
Big skates	Western GOA.
	Central GOA.
	Eastern GOA.
Longnose skates	Western GOA.
	Central GOA.
	Eastern GOA.
Other skates	GOA.
Sculpins	GOA.
Sharks	GOA.
Octopuses	GOA.

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Part IV

Federal Communications Commission

47 CFR Parts 0, 27, 73, et al.

Establishing Rules for Full Power Television and Class A Television Stations; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 27, 73, and 74

[MB Docket No. 22–227, FCC 22–73; FR ID 109687]

Establishing Rules for Full Power Television and Class A Television Stations

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) seeks comment on comprehensively deleting, updating, or otherwise revising Commission rules for full power television and Class A television stations that no longer have any practical effect given the completion of the transition from analog to digital-only operations and the post incentive auction transition to a smaller television band with fewer channels. This NPRM also seeks comment on a restructuring of the Commission's full power television rules, which largely consist of the technical licensing, operating, and interference rules for full power television.

DATES:

Comment date: April 10, 2023.

Reply comment date: April 25, 2023.

ADDRESSES: You may submit comments, identified by MB Docket No. 22–227, FCC 22–73, by any of the following methods:

▪ *Federal Communications Commission's Website: https://apps.fcc.gov/ecfs/*. Follow the instructions for submitting comments.

▪ *Mail:* Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

▪ *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at *Joyce.Bernstein@fcc.gov*, Emily Harrison, Media Bureau, at *Emily.Harrison@fcc.gov*, or Mark Colombo, Media Bureau, at *Mark.Colombo@fcc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

• *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://apps.fcc.gov/ecfs/.*

• *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

• Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

• Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. *See* FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Paperwork Reduction Act of 1995 Analysis: This document proposes new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens and pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, invites the general public and the Office of Management and Budget (OMB) to comment on these information collection requirements. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Synopsis

Incorporation by Reference

The Commission's proposals are limited to the incorporation by reference of standards that are associated with full power and Class A television services. Incorporation by reference is the process that Federal agencies use when referring to materials published elsewhere to give those materials the same force and effect of law in the Code of Federal Regulations as if the materials' text had actually been published in the **Federal Register**. 5 U.S.C. 552(a)(1) and Office of the Federal Register, IBR Handbook 1 (July 2018), *available at https://www.archives.gov/files/federal-register/write/handbook/ibr.pdf.* By using incorporation by reference, the Commission gives effect to technical instructions, testing methodologies, and other process documents that are developed and owned by standards development organizations. Referencing these documents in the Commission's rules substantially reduces the volume of material that would otherwise be published in the **Federal Register** and the Code of Federal Regulations. It also permits the Commission to more efficiently implement future standards updates. Once the Commission completes any necessary notice-and-comment rulemaking proceedings and applies agency expertise to ensure that any standards adopted are sound and appropriate, the Commission need only update the references to the standards in its rules.

The following standards have previously been approved for IBR as specified in 47 CFR 73.8000: (i) ATSC A/52; (ii) ATSC A/53; Parts 1–4 and 6: 2007; (iii) ATSC A/53 Part 5: 2010; (iv) ATSC A/65C; (v) ATSC A/85:2013; (vi) ATSC A/321:2016; (vii) ATSC A/322:2017; and (viii) OET Bulletin No. 69: ''Longley-Rice Methodology for Evaluating TV Coverage and Interference'' (February 6, 2004); IBR approved for 47 CFR 73.616.

Background

The Commission proposes to adopt revisions to rules in part 0, part 27, subparts E, H, I, J, and L of part 73, and certain parts of parts 74 and 90 in light of the fact that all television services have ceased analog operations. Given the conversion from analog to digital television technology, we propose to eliminate entire rules and portions of rules that provide for analog-to-analog

and analog-to-digital interference protection requirements and other analog operating requirements. We similarly propose to amend section headings and language in rules to remove references to DTV, digital, and analog television service, as these distinctions are no longer necessary. We also propose to delete outdated rules that are no longer valid given changes in Commission-adopted policy, such as the elimination of the comparative hearing process to award and renew broadcast licenses. We also propose to adopt other non-substantive, technical revisions as set forth in Appendix A and further described below, for example, to update previously-adopted station license periods and to delete obsolete rules governing the post-incentive auction transition period. We also propose to update our rules to reference the current designation for form numbers (*e.g.,* FCC Form 2100) and by requiring electronic filing in the Commission's Licensing and Management System (LMS). We also propose to make corrections or updates, *inter alia,* to section headings, spelling, contact information, and rule cross-references, or to language inadvertently omitted from a rule.

Deletion of Obsolete Rules and Language Recognizing the Full Power and Class A Digital Transition

Full power television stations were required to terminate all analog operations no later than June 12, 2009 and Class A stations September 1, 2015. Accordingly, we propose to eliminate entire rules, and portions of rules, that provide for analog-to-analog and analog-to-digital interference protection requirements and other analog operating requirements from subpart E (Television Broadcast Stations), subpart H (Rules Applicable to All Broadcast Stations), subpart I (Procedures for Competitive Bidding and for Applications for Noncommercial Educational Broadcast Stations on Non-Reserved Channels), and subpart J (Class A Televisions Broadcast Stations). The rules we propose to amend are related to analog operations (*i.e.,* rules that reference ''NTSC,'' ''analog'' (*see* 47 CFR 73.622(d)(1) (Digital television table of allotments) (removing text of this rule that refers to analog stations); 73.623(d) (removing analog technical references and reformatting remaining digital technical references into (d)(2)(i)–(iv) and (h) (DTV applications and changes to DTV allotments); 73.624(b) and (c)(3) (Digital television broadcast stations) (removing text of this rule that refers to analog stations); 73.683(d) (Field strength contours and presumptive determination of field strength at individual locations) (removing text of this rule that refers to analog stations); and 73.686(d) (Field strength measurements) (removing text of this rule that refers to analog stations). In addition, regarding § 73.5000(a) (Services subject to competitive bidding), we propose to delete the word ''analog'' where it is appears in the rule because there is no need to differentiate between analog and digital television services.), Grade A, Grade B, city grade contours, or F(50,50) curves (*see* 47 CFR 73.683(a)–(b) (Field strength contours and presumptive determination of field strength at individual locations); 73.1675(a)(1)(iii) (Auxiliary antennas) (delete analog contour and replace with digital noise limited contour); 73.5007(b)(2)(iii) and (b)(3)(iv) (Designated entity provisions); 73.6000 (Definitions); and 73.6010(b) (Class A TV station protected contour). The one exception is 47 CFR 73.626(f)(2)(i) (DTV distributed transmission systems), which states that the F(50,50) service contour of a DTS transmitter shall not extend beyond that of its reference facility, which will be retained. We separately propose to add text in 47 CFR 73.683(a) (Field strength contours and presumptive determination of field strength at individual locations) to provide guidance for those reviewing the cross-reference to this section found in 47 CFR 90.307(b) (Protection criteria)), with the corresponding digital contours defined in §§ 73.625(a), 73.622(e), 73.6010, and/or 74.792. As part of our reorganization of subpart E, we note that we propose to relocate 47 CFR 73.625(a) (Transmitter location) and 73.622(e) (DTV Service Areas) to new 47 CFR 73.618 and 73.619(c), respectively. We are not proposing to move § 73.6010 or § 74.792 as part of the reorganization. We note that NTSC is an abbreviation for the National Television Standards Committee, an association of engineers and scientists interested in the development of television in the analog era, many of which were employees of companies engaged in the manufacturing of television equipment, that developed the black and white and subsequently color television systems used in the United States. *See generally Amendment of the Commission's Rules Governing Color Television Transmissions,* Docket No. 10637, Report and Order, 41 F.C.C. 658 (1953). We also propose to amend rules that reference peak power, visual or aural carriers, or carrier frequencies because these are technical engineering terms related to analog television and the rules are related to analog television operations (*see* 47 CFR 73.653 (Operation of TV aural and visual transmitters); 73.664(a)–(c) (Determining operating power); 73.665 (Use of TV aural baseband subcarriers); 73.667 (TV subsidiary communications services); 73.669 (TV stereophonic aural and multiplex subcarrier operation); 73.681 (Definitions) (we propose to delete the following definitions relating to analog operations: ''Aural center frequency;'' ''Aural transmitter;'' ''Baseband;'' ''Frequency departure;'' ''Frequency deviation;'' ''Frequency swing;'' ''Main channel;'' ''Multiplex Transmission (Aural);'' ''Peak power;'' ''Visual transmitter power''); 73.682(c) (TV transmission standards); 73.687(a), (b), (c) introductory text, (c)(1), and (e)(2) (Transmission system requirements); 73.688(a) (Indicating instruments); 73.691 (Visual modulation monitoring); 73.699 (TV engineering charts) Figure12 (Figure 12 is referenced only by 73.687(b), which we propose to delete); 73.1350(f)(3) (Transmission system operation); 73.1540(a) (Carrier frequency measurements); 73.1545(c), (e), and Note to (e) (Carrier frequency departure tolerances); 73.1560 (c)(1)–(2) (Operating power and mode tolerances); 73.1570 (updating section heading) and (b)(3) (Modulation levels: AM, FM, TV and Class A TV aural); 73.1635(a)(5) (Special temporary authorizations (STA)); and 73.6024(c) (Transmission standards and system requirements). We note that 47 CFR 73.653 was raised in the ''FM6'' proceeding (*In the Matter of Amendments of Parts 73 and 74 of the Commission's Rules for Digital Low Power Television and Television Translator Stations,* MB Docket No. 03–185, Fifth Notice of Proposed Rulemaking (rel. June 7, 2022), 87 FR 36440 (rel. June 17, 2022), and should dependence on this rule be required in that proceeding, we would intend to add a separate rule specific to FM6 stations rather than retain this generally-applicable but clearly outdated rule)) and digital TV signals do not have specific visual or aural carriers. *See generally* 47 CFR 73.682(d) (Digital broadcast television transmission standard); *see also* 47 CFR 73.8000 (Incorporation by reference) (each of the several standards listed in the rule relate to DTV). We similarly propose to amend rules and figures which reference the vertical blanking interval, stereophonic sound transmission, modulation, subcarriers of any kind, components of the picture such as chrominance or color, or the sound or picture itself beyond the lines of resolution. These references are technical engineering terms related to analog television

operations since they are related to the picture derived from an analog visual carrier or the sound derived from an analog aural carrier. *See* 47 CFR 73.621(g) (Noncommercial educational TV stations—referencing Telecommunications Service on the Vertical Blanking Interval and in the Visual Signal); 73.646 (Telecommunications Service on the Vertical Blanking Interval and in the Visual Signal); 73.681 (Definitions) (proposing to delete definitions and the Note for ''Amplitude modulation (AM);'' ''BTSC;'' ''Blanking level;'' ''Chrominance;'' ''Chrominance subcarrier;'' ''Color transmission;'' ''Field;'' ''Frame;'' ''Frequency modulation (FM);'' ''IRE standard scale;'' ''Luminance;'' ''Monochrome transmission;'' ''Multichannel Television Sound (MTS);'' ''Negative transmission;'' ''Percentage modulation;'' ''Pilot subcarrier;'' ''Program related data signal;'' ''Reference black level;'' ''Reference white level of the luminance signal;'' ''Scanning;'' ''Scanning line;'' ''Visual carrier frequency;'' ''Visual transmitter''); 73.699 (TV engineering charts) (Figures 5, 5(a), 6, 7, 8, 13, 14, 15, 16, and 17); 73.1207(b)(2) (Rebroadcasts—referencing multiplex subcarrier or telecommunications service on the vertical blanking interval); and 73.1590(a)(5) (''TV stereophonic or subcarrier transmission equipment''), (c)(1), and (c)(3) (Equipment performance measurements). Section 73.699, Figure 11 (Assumed Ideal Detector Output) is no longer referenced anywhere else in the rules, and appears to have been inadvertently overlooked during a 1984 rule modification which deleted the sole reference to it from § 73.687(a) (*see* 49 FR 48305, 48312 (Dec. 12, 1984)), and we thus propose to delete it. While 47 CFR 73.621(h) (Noncommercial educational TV stations), which refers to the transmission of non-program related data service on ''Line 21,'' does not specifically use the term ''visual blanking interval,'' ''Line 21'' refers to part of the vertical blanking interval, and thus we propose to delete it. To the extent such analog rules are superseded by related requirements for digital operations, the digital rules are found in the digital broadcast television standard documents incorporated by reference in § 73.682(d). In addition, a number of rules we propose to amend have a digital equivalent elsewhere in the rules. *See* § 73.613 (Protection of Class A TV stations) relates to analog because Class A protections for digital stations are in § 73.616(e), which we are proposing to move to § 73.620(d). Sections 73.682(a)(2)–(13) and (15)–(24) (TV transmission standards) are replaced by § 73.682(d). Section 73.684 (Prediction of coverage) is in § 73.625 (DTV coverage of principal community and antenna system), some of which we are proposing to move into other rule parts in the proposed reorganization of our rules; reference in § 73.681 updated accordingly. The digital equivalent of § 73.685(a)–(c) (Transmitter location and antenna system) is found in § 73.625(a)(1)–(3). The digital equivalent of § 73.685(f) (Transmitter location and antenna system) is contained in 73.625(c)(3), which applies also to §§ 73.1690(b)(3) and (c)(3) (Modification of transmission systems). The digital equivalent of § 73.687(e)(1) (Transmission system requirements) is replaced by § 73.622(h), which we are proposing to move to § 73.611. The digital equivalent of § 73.698 (Tables) is replaced by § 73.623(d)(2), which we are proposing to move to § 73.622(k). Section 73.3550(b) (Requests for new or modified call sign assignments) has a reference to § 74.783(d), but § 74.791(a) is the equivalent digital rule. Accordingly, we are proposing to replace the reference to 74.783(d) with 74.791(a). The digital equivalent of § 73.3572(a)(4) (Processing of TV broadcast, Class A TV broadcast, low power TV, TV translators, and TV booster applications) is replaced by § 74.787(a)(4). The digital equivalent of § 73.6012 (Protection of Class A TV, low power TV and TV translator stations) is found in §§ 73.6017 and 73.6019. The digital equivalent of § 73.6013 (Protection of DTV stations) is found in § 73.6018 (Digital Class A TV station protection of DTV stations). The digital equivalent of § 73.6014 (Protection of digital Class A TV stations) is found in § 73.6017. For all of these cases, we propose to either modify the analog reference to specify a digital equivalent, or delete the analog-related rule entirely. We seek comment on these proposals.

We also propose to amend rule section headings and rules in subpart E, subpart H, and subpart J, to remove references to DTV and digital television service since all television services have transitioned from analog to digital operations and thus, there is no further need to differentiate between two separate kinds of service. For subpart E, see 47 CFR 73.616(a)–(e) and (g) (Post-transition DTV station interference protection); 73.621(j) (Noncommercial educational TV stations); 73.622(a) introductory text and (a)(2) (also delete reference to out-of-core-channels), (c)(1), (e)(1), (f)(6), (f)(7), (f)(8) (also delete references to out-of-core channels) (Digital television table of allotments); 73.623 (updating section heading), (a)–(f) and (h); (DTV applications and changes to DTV allotments); 73.624 (updating section heading), (a)–(c) and (g) (Digital television broadcast stations); 73.625 (updating section heading), (a)(1), (b)(1), (b)(3), (c)(4)(i)–(ii) (DTV coverage of principle community and antenna system); 73.626 (updating section heading), (a), (c)(1), (e), (f)(2), (f)(6) (DTV distributed transmission systems); 73.686(e) (Field strength measurements). For subpart H, see 47 CFR 73.1201(b)(1) (Station identification). And for subpart J, see 47 CFR 73.6010(c) and (d) (Class A TV station protection contour); 73.6017 (Digital Class A TV station protection of Class A TV and digital Class A TV stations); 73.6018 (Digital Class A TV station protection of DTV stations); 73.6019 (Digital Class A TV protection of low power TV, TV translator, digital low power TV and digital TV translator stations); 73.6022(a) (Negotiated interference and relocations agreements); 73.6020 (Protection of stations in the land mobile radio service); 73.6023 (Distributed transmission systems); and 73.6024(d) (Transmission standards and system requirements). We also propose to amend § 73.6024(d) (Transmission standards and system requirements) to require stations in the Mexican border zone to specify a full-service emission mask in any modification applications requiring coordination. We also propose to eliminate provisions of rules and amend section headings and language that are obsolete due to the conversion from analog to digital television technology, including references to the analog television booster service in subpart E and subpart H, since these services were not carried over into digital operations. *See Part 74 Order* at para. 6 and n.24. For subpart E, see 47 CFR 73.622(d)(1)–(2), Note to (e)(2), (e)(3), (f)(5), (f)(6), (f)(7), and (f)(8) (Digital television table of allotments); 73.623(a)–(b), (c)(2), (c)(3), (c)(5), (d), and (h) (DTV applications and changes to DTV allotments); 73.624(a), (b)(1)–(2), (d)–(f) (refer to pre-DTV transition procedures) (Digital television broadcast stations); and 73.626(c)(2) (DTV distributed transmission systems). Section 73.622(c)(2) states that an application may be filed for a channel or community not specified in the DTV Table of Allotments (formerly § 73.622(b)) if it is consistent with the rules and policies established in *Service Rules for the 746–764 and 776–794 MHz*

Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99–168, Third Report and Order, 16 FCC Rcd 2703, 2717–18, paras. 34–36 (2001) (stating that the Commission would allow stations on channels 59 through 69 to enter into voluntary agreements to temporarily relocate to channels 52 through 58). Because § 73.622(b) has been deleted and channels 52 through 58 reallocated for non-broadcast use, we propose to delete this section of the rule. Similarly, we propose to delete the last five sentences of § 73.622(c)(1), which discuss procedures for filing applications for channel changes made in the deleted paragraph (b), DTV Table of Allotments, citing the *MO&O on Reconsideration of the Sixth R&O,* 13 FCC Rcd 7418, (1998), and analog channel swaps. For subpart H, see 47 CFR 73.1001(c) (Scope); 73.3521 (Mutually exclusive applications for low power television, television translators and television booster stations); 73.3525 (Note) (Agreements for removing application conflicts); 73.3533(a)(5) (Application for construction permit or modification of construction permit); 73.3584(a), (c) (Procedure for filing petitions to deny); 73.3572 (section heading, (a)(2), (c) and (f)–(g)) (Processing of TV broadcast, Class A TV broadcast, low power TV, TV translators, and TV booster applications); and 73.3598(a) introductory text (Period of construction). We propose to amend § 73.6026 (Broadcast regulations applicable to Class A television stations) to remove references to analog-only rules applicable to Class A television stations, consistent with proposals above. *See* 47 CFR 73.6026 (delete reference to § 73.635 (Use of common antenna site); 73.646 (Telecommunications Service on the Vertical Blanking Interval and in the Visual Signal); 73.653 (Operation of TV aural and visual transmitters); 73.665 (Use of TV aural baseband subcarriers); 73.667 (TV subsidiary communications services); 73.669 (TV stereophonic aural and multiplex subcarrier operation); and 73.691 (Visual modulation monitoring). As discussed *infra,* we propose to delete the rules related to the Subscription Television Service as unnecessary and no longer in use, and amend 47 CFR 73.664 (Determining operating power), to remove references to measurement techniques we believe no longer have any use in the processing of applications to determine interference to other stations or previously filed applications. We seek comment on these proposals.

We also propose to remove from certain part 74 rules inadvertent references to DTV and digital television service, overlooked in the *Part 74 Order,* since, with rare exception, all part 74 television services have transitioned from analog to digital operations and thus, there is no further need to differentiate between two separate kinds of service. *See* 47 CFR 74.792(b) (Low power TV and TV translator station protected contour); 74.793(e), (g)–(h) (Low power TV and TV translator station protection of broadcast stations); and 74.794 (section heading, paragraph (b) introductory text, (b)(1), and (b)(2) (Digital emissions). We also propose to delete the second sentence in 47 CFR 74.793(b) (Low power TV and TV translator station protection of broadcast stations), given the fact that we propose to delete the analog threshold interference levels in 47 CFR 73.623(c)(2) (DTV applications and changes to DTV allotments) and therefore there is no need to distinguish digital operations. We note that a small number of TV translator stations licensed to the State of Alaska (the Alaska translator stations) remain operating in analog pursuant to a Commission waiver of the analog termination date. *See State of Alaska—Request for Waiver of Section 74.731(m) of the Commission's Rules,* 36 FCC Rcd 10765 (2021); *see also* Letter to State of Alaska from Barbara A. Kreisman, Chief, Video Division (Jan. 26, 2022), a copy of which is available at LMS File Nos. 0000179529, 0000179531, 0000179528, 0000179535, 0000179536, 0000179527, 0000179526, 0000179534, and 0000179533; *see also* Letter to State of Alaska from Barbara A. Kreisman, Chief, Video Division (July 15, 2022), a copy of which is available at LMS File Nos. 0000194718, 0000194713, 0000194714, 0000194717, 0000194716, 0000194712, and 0000194715 (extending the tolling through October 3, 2022). We understand the licensee of these translator stations is actively transitioning and anticipates terminating analog service in the near future. In the event any of the Alaska translator stations have not completed their digital transition by the effective date of these rule changes discussed herein, we direct the Media Bureau to follow appropriate procedures to impose any necessary conditions on the station's authorization to continue analog operations.

We also propose to remove references to an element of the Table of Allotments that has been previously updated. Applicants for full power digital broadcast stations may only apply to construct on channels designated in a codified Table of Allotments and only in the communities listed therein. *See* 47 CFR 73.622(c)(1). To accommodate the analog to digital television transition, the Commission adopted § 73.622(b) (DTV Table of Allotments) in 1997 to allot a paired DTV channel to each analog television licensee and permittee. *See* 47 CFR 73.622(b) (2018) (DTV Table of Allotments); *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service,* MM Docket No. 87–268, Sixth Report and Order, 12 FCC Rcd 14588 (1997) (*Sixth Report and Order*), Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, 13 FCC Rcd 7418 (1998) (*MO&O on Reconsideration of the Sixth R&O*). The Commission later deleted § 73.622(b), as well as the analog TV Table of Allotments previously found in § 73.606, when it adopted § 73.622(i) (Post-Transition Table of Allotment). *See* 47 CFR 73.622(i); *Amendment of Parts 27, 54, 73, 74, and 76 of the Commission's Rules to Delete Rules Made Obsolete by the Digital Television Transition,* MB Docket No. 17–105, Order, 33 FCC Rcd 863 (2018). The rules, however, continue to refer to ''Appendix B,'' which specified the service area that must be protected for each channel allotted in § 73.622(b) during most of the transition period, and set forth the maximum effective radiated power (ERP) and antenna height above average terrain (HAAT) for each allotment in the ''initial'' DTV table, *i.e.,* § 73.622(b). We therefore propose to remove references to ''Appendix B'' in our rules. Appendix B, and a description of its use and contents, is in the *Sixth Report and Order,* 12 FCC Rcd at 14693–754. Corrections were made to Table 2 of Appendix B in the *MO&O on Reconsideration.* We note that § 73.622(f)(3)(i) and (ii) both refer to policies specific to Appendix B, and thus propose to delete them. We seek comment on these proposals.

We propose to amend § 73.612 to remove references to distance separations, which outside of new allotment proceedings are not used in digital TV. *See* 47 CFR 73.612(a)–(b) and Note (Protection from interference). This rule is obsolete, as TV stations are now protected using OET Bulletin No. 69. *See* 47 CFR 73.616(d) (Post-transition DTV station interference protection). We propose to delete § 73.615 because the Commission staff's current practice provides additional precision beyond what the text of the current rule requires since the staff now issues authorizations

based on the more precise kW value as opposed to dBk and does not round HAAT values as described in this rule. *See* 47 CFR 73.615 (Administrative changes in authorizations). For example, a station authorized at 30 dBk (decibels above 1 kW) would operate at 1000 kW, while a station at 29.9 dBk consistent with the current rule would operate at approximately 977 kW. The Media Bureau (Bureau), however, authorizes stations today based on kW, allowing a station to be authorized at an intermediate value such as 990 kW. The Bureau's current practice therefore provides more precision. For the same reason, we propose to remove the dBk reference in § 73.614(a) (Power and antenna height requirements). We propose to delete § 73.622(g)(2), which pertains to protection of analog TV signals by an upper-adjacent digital signal. *See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service,* MM Docket No. 87–268, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, 13 FCC Rcd 7418, 7467, para. 120 (1998). We propose to delete § 73.1620(f) (Program tests) since it refers to a policy of allowing 1000 watt UHF translators on vacant allotments, a policy which was ended prior to 1984 (*see Low Power Television and Television Translator Service,* MM Docket No. 83–1350, Report and Order, 102 F.C.C.2d 295, 311 (1984) (indicating that § 73.3516(c) should have been modified at the time when LPTV rules were adopted, which is the rule part that 73.1620(f) refers to), and to delete from § 73.6024(b) (Transmission standards and system requirements) a reference to § 74.736, as that section was recently eliminated by the Commission in the *Part 74 Order. See Part 74 Order.* We also propose to delete §§ 73.685(g) (Transmitter location and antenna system) and 73.6025(b) (Antenna system and station location) because these rules were adopted many decades ago for the analog era and are not relevant to or used in the digital environment. *See* 28 FR 13572, 13678–79 (rel. Dec. 14, 1963) (§ 73.685 (1963)). We seek comment on these proposals.

Updates and Corrections to the Full Power and Class A Rules

We also propose to make other updates and corrections to the full power and Class A rules. We propose to update the reference to the 2000 census population data found in § 73.616(d)(1) to reflect a reference to the most recent official decennial U.S. Census population data, which conforms paragraph (d)(1) to the language in § 73.616(e)(1). *See* 47 CFR 73.616(d)(1) (Post-transition DTV station interference protection). This language was inadvertently not included in paragraph (d)(1). *See Authorizing Permissive Use of the ''Next Generation'' Broadcast Television Standard,* GN Docket No. 16–142, Notice of Proposed Rulemaking, 32 FCC Rcd 1670, 1696–97, para. 59 (2017) (in proposing to adopt § 73.616(e)(1), the Commission stated that ''[w]e propose to update the Commission's rules regarding acceptable levels for interference resulting from a broadcaster's application for new or modified facilities''); *Authorizing Permissive Use of the ''Next Generation'' Broadcast Television Standard,* GN Docket No. 16–142, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9930, 9986–88, para. 114 (2017) (in adopting the rule, the Commission stated that ''[a]fter the repacking process is complete, any broadcast television service or interference calculations will be based on the 2010 U.S. Census statistics, until after 2020, when the next U.S. Census statistics are scheduled to become available and the Media Bureau subsequently announces the date of application of such data''). We also propose to make a similar revision in 47 CFR 73.686(c)(1)(i) to conform the rule to 47 CFR 73.616. As part of our reorganization, we propose to relocate § 73.616(d) (Post-transition DTV station interference protection) into a new § 73.620. We propose to amend references to the ''Table of Allotments'' in § 73.622(j) to the ''Table of TV Allotments'' in all places where it is referenced in subpart E (*see* 47 CFR 73.622 (section heading and (a)) (Digital television table of allotments); 73.623(d), (f), and (h) (DTV applications and changes to DTV allotments)) and in subpart H, for continuity. *See* 47 CFR 73.1015 (Truthful written statements and responses to Commission inquiries and correspondence). We also propose to update the reference to FM Table of Allotments to ''Table of FM Allotments'' in 47 CFR 73.1015 to reflect the name of the table in 47 CFR 73.202(b). We propose to amend § 73.622(j) to reflect a channel substitution previously adopted upon notice and comment rulemaking that was adopted shortly before the current version of the Table of TV Allotments was adopted. On June 12, 2021, the Media Bureau issued a Notice of Proposed Rulemaking in response to a petition filed by KTUL Licensee, LLC, the licensee of KTUL, Tulsa, Oklahoma, requesting the substitution of channel 14 for channel 10 at Tulsa in § 73.622(i), the DTV Table of Allotments. *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Tulsa, Oklahoma),* MB Docket No. 21–9, Notice of Proposed Rulemaking, 36 FCC Rcd 157 (Vid. Div. 2021) (*Tulsa NPRM*). In the *Tulsa NPRM,* the Bureau noted that the Commission had completed the incentive auction and broadcast television spectrum repacking authorized by the Spectrum Act and that the Bureau would amend the rules to reflect all new full power channel assignments in a revised Table of Allotments. Because the Table had not yet been amended, however, the Bureau continued to refer to § 73.622(i) for the purpose of the Tulsa proceeding. *Id.* at 157, n.1. The Bureau adopted a Report and Order amending § 73.622(i) to substitute channel 14 at Tulsa, *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Tulsa, Oklahoma),* MB Docket No. 21–9, Report and Order, DA 21–1161 (rel. Sept. 16, 2021), and shortly thereafter the Commission adopted the Table of TV Allotments, which superseded § 73.622(i). *October 2021 Order* at para. 8. The amendment to § 73.622(j) reflects this channel substitution. We propose to amend certain rules in subpart E to add common abbreviations used elsewhere in the Commission's rules and forms. *See, e.g.,* 47 CFR 73.614(a) (adding abbreviations for ''ERP'' and ''HAAT'') (Power and antenna height requirements); and 73.625(a)(1) (adding abbreviations for ''ERP'' and ''HAAT'') (DTV coverage of principal community and antenna system). We propose to amend certain rules in subpart H and subpart I to provide full power and Class A licensees and permittees with accurate information about current Commission forms and filing procedures, including the removal of obsolete forms. *See* 47 CFR 73.1250(e) (Broadcasting emergency information); 73.1350(h) (Transmission system operation); 73.1560(a)(1) and (d) (Operating power and mode tolerances); 73.1615(c) (Operation during modification of facilities); 73.1620(a)(1)–(3) (Program tests); 73.1635(a)(2)–(3) (Special temporary authorizations (STA)); 73.1675(b) (Auxiliary antennas); 73.1690(b) and (c)(3) (Modification of transmission systems); 73.1740(a)(4) (Minimum operating schedule); 73.1750 (Discontinuance of operation); 73.2080(c)(6) and (f) (deleting the references to obsolete Form 397 and updated the names of forms) (Equal employment opportunities (EEO)); 73.3500 (Application and report forms); 73.3533(a)(1) and (a)(4)–(a)(7)

(Application for construction permit or modification of construction permit); 73.3536(b)–(c) (Application for license to cover construction permit); 73.3540(c)–(f) (Application for voluntary assignment or transfer of control); 73.3541(b) (Application for involuntary assignment of license or transfer of control); 73.3544(b)–(c) (Application to obtain a modified station license); 73.3578(b) (Amendments to applications for renewal, assignment or transfer of control); 73.3587 (Procedure for filing informal objections); 73.3549 (Requests for extension of time to operate without required monitors, indicating instruments, and EAS encoders and decoders); 73.3550(a) and (j) (also adding ''–DT'' suffix in (a), (f), (k), and (m) (Requests for new or modified call sign assignments). The Commission has acknowledged the use of the ''–DT'' suffix in prior rulemakings. In 2004, the Commission permitted stations simulcasting their analog programming on their digital channel to make station identification announcements simultaneously for both stations as long as the identification included both call signs ''(*e.g.,* ''WXXX–TV and WXXX–DT'').'' *See Second Periodic Review of the Commission's Rules and Polices Affecting the Conversion to Digital Television,* MB Docket No. 03–15, Report and Order, 19 FCC Rcd 18279, 18355, para. 173 (2004) (subsequent citations omitted) (*Second Periodic Review*); *see also Digital Transition Call Sign Procedures,* Public Notice, 24 FCC Rcd 7617 (MB 2009). We also propose to update 47 CFR 73.3598(c) (Period of construction); 73.5005(a) (Filing of long-form applications); and 73.5006(b) (Filing of petitions to deny against long-form applications). We note that the numbering of our forms has changed with the transition of the Commission's broadcast licensing database from the Consolidated Database System (CDBS) to the Licensing and Management System (LMS).

We propose to update § 73.1030 to reflect updated contact information for the National Radio Astronomy Observatory site and the Radio Frequency Management Coordinator. *See* 47 CFR 73.1030(a)(1) and (b)(2) (Notifications concerning interference to radio astronomy, research and receiving installations). We propose to delete § 73.682(a)(1) as duplicative of § 73.624(a) and thus, unnecessary. *See* 47 CFR 73.682(a)(1) (TV transmission standards) and 47 CFR 73.624(a) (Digital television broadcast stations) (both noting the width of a television channel is 6 MHz). We seek comment on these proposals.

We also propose to make amendments to correct typographical errors in words and cross-references that contain incorrect rule citations. 47 CFR 73.616(e)(1) (Post-transition DTV station interference protection); 73.622(c)(1) (Digital television table of allotments); 73.623(c)(5)(iii), (d)(1), (d)(4) (DTV applications and changes to DTV allotments); 73.624(g) (Digital television broadcast stations); 73.625(c)(5) (cites to 73.622(f)(4) which is irrelevant to electrical beam tilt) (DTV coverage of principal community and antenna system); 73.626(c)(2) (DTV distributed transmission systems); 73.681 (definition for ''Antenna height above average terrain'' corrected to update rule cross-reference) (Definitions); 73.682(d) (TV transmission standards); 73.683(c)(3) (Field strength contours and presumptive determination of field strength at individual locations); 73.1217 (Broadcast hoaxes); 73.1250 (Broadcasting emergency information); 73.1615(b)(3) (Operation during modification of facilities); 73.1690(b)(3) and (c)(3) (Modification of transmission systems); 73.3550(b) and (i) (Requests for new or modified call sign assignments); 73.5007(b)(3)(v) (Designated entity provisions); 73.3578(b) (Amendments to applications for renewal, assignment or transfer of control); 73.6018 (Digital Class A TV station protection of DTV stations); 74.793(g) (Low power TV and TV translator station protection of broadcast stations); and 73.4060(a) (Citizens agreements). We propose to delete repetitive language within a rule. *See* 47 CFR 73.623(e) (DTV applications and changes to DTV allotments). We also propose to revise § 73.682(d) to break the existing paragraph into paragraphs, without altering its content, in order to make the paragraph more accessible to licensees and the public. *See* proposed 47 CFR 73.682(d)(1)–(4) (TV transmission standards). We also propose to remove citations to sections of the Communications Act in proposed § 73.682(d)(3)(ii) relating to the organization and functions of the Commission that we believe were inadvertently included in the rule, as well as the physical address of ATSC in favor of solely providing an updated web address (*https://www.atsc.org/documents/atsc-1-0-standards/).* We also propose to update the physical address of ATSC in 47 CFR 73.8000 (Incorporation by reference). In addition, we propose to eliminate notes to rules and shift the language into the text of the relevant rule to conform to the publishing conventions of the Administrative Committee of the **Federal Register**. *See* 47 CFR 73.682 (TV transmission standards); 73.1216 (Licensee-conducted contests); 73.1217 (Broadcast hoaxes); and 73.3525 (Agreements for removing application conflicts). We seek comment on these proposals.

We propose to delete § 73.685(e) (Transmitter location and antenna system) because it is redundant with § 73.625(c)(2) (antenna system), and contains certain requirements regarding directional antennas which are no longer in use. We propose to delete § 73.622(f)(2) as obsolete, since all applications are now evaluated for interference using OET Bulletin No. 69. *See* 47 CFR 73.622(f)(2) (Digital television table of allotments). *See also* 47 CFR 73.616(d) (Post-transition DTV station interference protection), which requires applications to pass an analysis with OET Bulletin No. 69. We also propose to delete § 73.6027 as duplicative and unnecessary. That rule provides that Class A television station must comply with § 73.1030 of the rules. *See* 47 CFR 73.6027 (Class A TV notifications concerning interference to radio astronomy, research and receiving installations). Section 73.1030, however, is already applicable to Class A stations. *See* 47 CFR 73.1030 (Notifications concerning interference to radio astronomy, research and receiving installations). Class A licensees are required to comply with all part 73 regulations except for those that cannot apply for technical or other reasons. *Establishment of a Class A Television Service,* MM Docket No. 00–10, Report and Order, 15 FCC Rcd 6355, 6365, para. 23 (2000) (*Class A Report and Order).* We also propose to place a reference to § 73.1030 in § 73.6026 (Broadcast regulations applicable to Class A television stations), which lists rules that apply to Class A by reference. We similarly propose to delete the last sentence of 73.6020 (Protection of stations in the land mobile radio service) with respect to land mobile radio service (LMRS) operations on channel 16 in New York, as it is duplicative of the reference to § 74.709 in the first sentence of 73.6020, since § 74.709 requires protection of channel 16 in New York. We also propose to streamline § 73.6000 by amending the rule, after deleting the analog content, to simplify and shorten the language without further altering the meaning or content. *See* 47 CFR 73.6000 (Definitions—because we propose to delete paragraph (1) *supra,* we propose to delete the number (2), but retain the

text). We seek comment on these proposals.

We also seek to add an explanatory note to § 73.623 to reference and explain the existence of a granted waiver with respect to the community of Los Angeles, California. *See* 47 CFR 73.623 (DTV applications and changes to DTV allotments). A similar explanatory note was added to § 74.709 in the Commission's *Part 74 Order* at para. 8. Section 73.623 requires television stations to protect certain channels for use by LMRS in thirteen U.S. cities listed in the rule. In 2008, the Commission's Public Safety and Homeland Security Bureau (PSHSB) granted a waiver pursuant to § 337(c) of the Communications Act, as amended, allowing the County of Los Angeles to use channel 15 in Los Angeles for public safety communications. *See Request for Waiver of the Commission's Rules to Authorize Public Safety Communications in the 476–482 MHz Band (County of Los Angeles, California),* Order, 23 FCC Rcd 18389 (PSHSB 2008). Because this channel is adjacent to two channels contained in § 73.623, we believe the public interest is served by including a note explaining the existence of the 2008 waiver. We seek comment on these proposals.

Post-Incentive Auction Licensing and Operation (§ 73.3700)

Section 73.3700(a)(2) includes licensing and procedural rules for television stations during the post-incentive auction transition. The incentive auction closed on April 13, 2017 (*Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced,* GN Docket No. 12–268, Public Notice, 32 FCC Rcd 2786 (WTB/MB 2017) (*Channel Reassignment Public Notice*), and thus, we propose to amend § 73.3700(a)(2) to add the citation to the *Channel Reassignment Public Notice* that was released by the Commission's Media and Wireless Telecommunications Bureaus and Incentive Auction Task Force announcing the completion of the auction and deadlines for stations assigned new channels through the repacking process to terminate operations on pre-auction channels. *See* 47 CFR 73.3700(a) (Definitions), and (a)(2) (Channel reassignment public notice). We also propose to delete as obsolete certain definitions that relate to the bid options that were available to full power and Class A television broadcasters eligible to participate in the incentive auction that closed on April 13, 2017. *See* 47 CFR 73.3700(a) (Definitions), (6) (High-VHF-to-Low-VHF station), (7) (License relinquishment station), and (17) (UHF-to-VHF station). We also propose to delete as obsolete procedural rules that governed the post-incentive auction period for stations to transition off their pre-auction channel, which ended on July 13, 2020, including the portions of the rule pertaining to the special post-incentive auction displacement filing window which closed on June 1, 2018 and applied to low power television and television translator stations displaced by the auction. *See* 47 CFR 73.3700(b) (Post-auction licensing), (c) (Consumer education for transitioning stations), (d) (Notice to MVPDs), and (g) (Low Power TV and TV translator stations).We retain those portions of the rule pertaining to the small number of stations that are still engaged in constructing final facilities on their post-auction channel assignments and to the TV Broadcaster Relocation Fund. *See* 47 U.S.C. 1452(j)(1)(A)–(B); *see also Incentive Auction Task Force and Media Bureau Report on the Status of the Post-Incentive Auction Transition and Reimbursement Program; Announce a Further Allocation from the Relocation Fund; and Announce Procedures for Eligible Entities to Close Out Accounts in the Fund,* Public Notice, 34 FCC Rcd 304, 312, para. 26 (2019); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions,* Report and Order, 29 FCC Rcd 6567, 6825–26, paras. 632–36 (2014). We seek comment on these proposals.

Updates to Listing of FCC Policies

Sections 73.4000 *et seq* provide certain FCC policies and citations related to all broadcast stations for the purpose of reference and convenience. Section 73.4000 addresses the fact that the present listing of FCC policies and citations contained in 73.4000 *et seq* may not be an all-inclusive list. We propose to also include cautionary language in the rule to note that subsequent decisions or actions may exist. We seek comment on this proposal. We also propose to amend a number of rules in §§ 73.4000 *et seq* that are now obsolete or otherwise require updates. For instance, the Commission no longer uses comparative hearings to award commercial broadcast licenses so § 73.4082 related to such proceedings is obsolete. *See* 47 CFR 73.4082 (Comparative broadcast hearings—specialized programming formats). The Commission no longer resolves mutually exclusive broadcast applications through comparative hearings but rather now uses competitive bidding procedures. *See* 47 CFR 73.5000 *et seq* (procedures for competitive bidding); *Implementation of Section 309(j) of the Communications Act; Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service,* MM Docket No. 97–234, First Report and Order, 13 FCC Rcd 15920 (1998) (subsequent citations omitted) (*Competitive Bidding First R&O*). We propose to remove or update rules that implicate audio services that are obsolete or require updates. Section 73.4017 is proposed to be removed because these policies have been replaced by competitive bidding procedures in §§ 73.5000–73.5009. *See* 47 CFR 73.4017 (Application processing: Commercial FM stations); 47 CFR 73.5000–73.5009; *Competitive Bidding First R&O,* at 15972, para. 137 (1998). Section 73.4100 and § 73.4101 are proposed to be retained and amended to add a more recent policy pronouncement from 1981 and 1987. *See* 47 CFR 73.4100 (Financial qualifications; new AM and FM stations) and 73.4101 (Financial qualifications, TV stations); *Revision of Application for Construction Permit for Commercial Broadcast Station (FCC Form 301),* Memorandum Opinion and Order, 50 R.R.2d 381, para. 6 (1981) and *Certification of Financial Qualification by Applicants for Broadcast Station Construction Permits,* Public Notice, 2 FCC Rcd 2122 (1987). Section 73.4107 is proposed to be eliminated as the cited documents refer to a completed proceeding. All of the cited documents concern the rollout and implementation of Docket 80–90 and the 689 FM allotments adopted therein. The allotments have been established, the proceeding is terminated, and we believe there is no public interest served by listing the cited documents in the policy statement. *See* 47 CFR 73.4107 (FM broadcast assignments, increasing availability of). We also propose to eliminate § 73.4108 because this requirement was eliminated for FM stations. *See* 47 CFR 73.4108 (FM transmitter site map submissions); *1998 Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules, and Processes,* MM Docket Nos. 98–43 and 94–149, Report and Order, 13 FCC Rcd 23056, 23082, para. 60 (1998) (rejecting the suggestion that the Commission continue to require the filing of site maps, finding it to be an ''unnecessary expense for applicants'' ''in most instances''). And we propose to update rules to reflect the

availability of newer versions of procedures and Commission orders. *See* 47 CFR 73.4210 (Procedure Manual: ''The Public and Broadcasting'') (The rule is tentatively updated to reflect a newer version of the procedure manual, which is available at: *https://www.fcc.gov/media/radio/public-and-broadcasting*); 73.4267 (Time brokerage) (The revisions to the rule propose to remove outdated citations and add citations to reflect current policy). *See Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests,* MM Docket Nos. 94–150, 92–51, 87–154, Report and Order, 14 FCC Rcd 12559 (1999). *See also* 47 CFR 73.3555, Note 2(j). We also propose to update certain rules to reflect the subsequent passage of legislation and the later Commission revision of the relevant policy. *See* 47 CFR 73.4055 (Cigarette advertising) (tentatively updated to reflect that in 1986, Congress extended the ban to include advertisements for smokeless tobacco products. *See* 15 U.S.C. 4402(c)). We seek comment on these proposals.

Deletion of Obsolete Language Due to Passage of Time and Changes in Commission Policy

The Class A television service was authorized by passage of the Community Broadcasters Protection Act of 1999 (CBPA), pursuant to which eligible LPTV stations could obtain partial qualified primary status. *See* Community Broadcasters Protection Act of 1999, Public Law 106–113, 113 Stat. Appendix I at pp. 1501A–594—1501A–598 (1999), *codified at* 47 U.S.C. 336(f) (CBPA). The CBPA was enacted on December 31, 1999, and in implementing the Act in 2000, the Commission gave eligible stations until May 1, 2000, to file an application for a Class A license. *Class A Report and Order;* Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 8244 (2001). Stations that were authorized or applications that were no longer subject to the filing of competing applications prior to passage of the CBPA were not required to protect analog LPTV stations that became Class A stations with passage of the CBPA on November 29, 1999. All of the LPTV stations that became analog Class A stations and are still operating are now digital Class A stations. Accordingly, this note to § 73.613(a) is now obsolete and we propose to delete it. *See* 47 CFR 73.613 (Note to 73.613(a)) (Protection of Class A TV Stations). Section 73.6018 provides, in part, that Class A television stations were required to protect any pre-transition DTV applications filed before December 31, 1999, or between December 31, 1999 and May 1, 2000. Because the time for filing such pre-transition DTV applications is long past and none remain pending, we tentatively conclude that we should delete this language. *See* 47 CFR 73.6018 (Digital Class A TV protection of DTV stations). We also propose to delete references to digital and DTV. In addition, now that May 1, 2000 is past, the final sentence in 73.623(c)(5) is rendered obsolete through the passage of time and we propose to delete it. 47 CFR 73.623(c)(5) (DTV applications and changes to DTV allotments). We believe this deletion is further supported by the fact that the Commission previously stated ''Section 73.623 is amended by revising paragraph (a) as follows and *deleting paragraphs (c)* and (g).'' (emphasis added). This was also reflected in the **Federal Register** publication, 86 FR 66193 (Nov. 22, 2021), which states ''Section 73.623 is amended by revising paragraph (a) and *by removing and reserving paragraphs (c)* and (g).'' (emphasis added). 86 FR 66193, 66209 (Nov. 22, 2021). While references to the section were deleted, the paragraph remains in the rules. We seek comment on these proposals.

Section 73.6019 provides, in part, that Class A stations that were reassigned a new channel in connection with the incentive auction were not required to protect low power television or TV translator stations in the applications they filed for a construction permit for the channel specified in the April 13, 2017 *Channel Reassignment Public Notice.* 47 CFR 73.6019 (Digital Class A TV station protection of low power TV, TV translator, digital low power TV and digital TV translator stations), citing § 73.3700(b)(1). Those applications were required to be filed by July 12, 2017, absent a waiver. *Channel Reassignment Public Notice,* 32 FCC Rcd at 2809, para. 70. Such waiver requests were required to be submitted no later than June 12, 2017 and all such requests have been disposed of in decisions that are now final. *Id.* Thus, we propose to delete that portion of the rule as obsolete. We seek comment on this proposal.

Section 73.6022 provides that Class A stations displaced by channel allotment changes by a DTV station could negotiate to exchange channels with the DTV station, subject to certain conditions. 47 CFR 73.6022 (section heading and (b)) (Negotiated interference and relocation agreements). Class A stations were subject to displacement only as the result of ''engineering solutions'' by full power television stations to resolve ''technical problems'' in replicating or maximizing the full power television station's digital service area during the digital transition. *See Freeze on the Filing of Applications for Digital Replacement Translator Stations and Displacement Applications,* Public Notice, 29 FCC Rcd 6063 (2014), citing *Class A Report and Order,* 15 FCC Rcd at 6380–81, paras. 61–64 (subsequent citations omitted). Because the digital transition is complete, any such displacements were necessarily already identified and resolved. Accordingly, we tentatively conclude that we should delete paragraph (b) of the rule as obsolete. We seek comment on that tentative conclusion.

We also propose to amend § 73.1020(a) to delete dates in the past and include the applicable dates for future license renewal cycles. Section 73.1020(a) provides, in part, the default time of expiration for initial and renewal broadcast licenses by state. Specifically, the default time of expiration for such licenses will be 3 a.m., local time, on certain enumerated dates and thereafter at 8-year intervals for radio and TV broadcast stations depending on location. Because the dates specified in the current rule for filing such renewal applications are now in the past, we propose to amend the rule to update the license expiration dates for the next renewal cycle. We seek comment on that proposal. In addition, we propose to remove as obsolete language from § 73.1020(b) that refers to the cutoff date for the filing of applications mutually exclusive with renewal applications that are filed on or before May 1, 1995 and no such applications are on file. *See* 47 CFR 73.1020(b) (Station license period). *See also Reading Broadcasting, Inc., for Renewal of License of Station WTVE(TV), Channel 51 Reading, Pennsylvania and Adams Communications Corporation, for Construction Permit for a New Television Station to Operate on Channel 51, Reading, Pennsylvania,* MM Docket No. 99–153, 17 FCC Rcd 14001, para. 1 (2002) (In this decision, the Commission explained that it was ''dispos[ing] of the last remaining ''comparative renewal'' proceeding, in which an incumbent licensee faces a comparative challenge from a construction permit applicant for the same facilities. Congress, by Act of February 8, 1996, Public Law 104–104, 110 Stat. 56, codified as 47 CFR 309(k)(4), prohibited the comparative consideration of renewal applicants filed after May 1, 1995.''). We seek comment on this proposal.

Similarly, we propose to remove as obsolete due to the passage of time § 73.3598(b)(3), which provides that the

period of construction for an original construction permit will toll for certain reasons of international coordination during the DTV transition, which is now complete. We propose to delete language in proposed § 73.682(d)(1) that specifies that digital standards incorporated by reference into the Commission rules became effective October 11, 2011, as the specific start date is now obsolete. *See* proposed § 73.682(d)(1) (TV transmission standards). We also delete references to DTV and digital. We also propose to remove as obsolete the portion of § 73.3572(a)(3) that provided a window that expired October 1, 2000 for certain proposed minor change applications. We also propose to delete provisions that reference the comparative hearing process, which no longer exists. *See* 47 CFR 73.1620 (Program tests) (g)(1)–(3) (Reports required); 73.3519(a) (Repetitious applications) (the last sentence of paragraph (a) that applicants whose applications have been denied in a comparative hearing may apply immediately for another available facility); and § 73.4082 (Comparative broadcast hearings—specialized programming formats). We also propose to delete § 73.3523, the first sentence of § 73.3516(e), and the second sentence of § 73.3516(e)(1), which deal with obsolete procedures regarding mutually exclusive proceedings for renewal applications filed prior to May 1, 1995. We also propose to delete the first clause of 47 CFR 73.3525(a) (Agreements for removing application conflicts), which cross-references § 73.3523. In addition, we propose to delete the second sentence of § 73.3533(b), which discusses an obsolete procedure for filing construction permit extension applications. Specifically, that rule refers to § 73.3534, which specified three factors that could justify an extension of a construction permits. *See* 47 CFR 73.3534. *See also Application of Mansfield Christian School,* 10 FCC Rcd 12589, 12590, para. 5 (1995). That section, however, was deleted in 2004. *See* 69 FR 72043 (Dec. 10, 2004). We seek comment on these proposals.

We propose to delete obsolete language in § 73.664(c)(3)(iii) concerning the certification of equipment. The FCC no longer ''type accepts'' equipment, having overhauled the process to allow private parties to verify such equipment meets FCC requirements, and the results of such verifications do not need to be submitted to the FCC. *See* 47 CFR 73.664(c)(3)(iii) (Determining operating power). Currently, there are two procedures used for RF device equipment authorization: SDoC and Certification. *See* 47 CFR 2.906 (Supplier's Declaration of Conformity) and 2.907 (Certification); *see also* Office of Engineering & Technology (OET), Equipment Authorization, *https://www.fcc.gov/engineering-technology/laboratory-division/general/equipment-authorization* (last visited Aug. 9, 2022). On July 14, 2017, the Commission amended its radiofrequency equipment authorization rules. *Amendment of Parts 0, 1, 2, 15, and 18 of the Commission's Rules Regarding Authorization of Radiofrequency Equipment,* ET Docket No. 15–170, First Report and Order, 32 FCC Rcd 8746 (2017) (*SDoC Order*). The adopted rules phased out the Verification and Declaration of Conformity equipment authorization procedures and replaced them with a new equipment authorization procedure, the SDoC. Federal Communications Commission, Authorization of Radiofrequency Equipment, 82 FR 50820 (Nov. 2, 2017). A device authorized under previously accepted procedures remains authorized and may be marketed or used if it continues to meet the requirements attendant to that authorization. We also propose to modify text throughout § 73.664 in order to remove references to analog operations such as references to the visual transmitter and to peak power. We propose to retain the remainder of this section that continues to provide important information for measuring transmitter operating power even in the post-transition context. We similarly propose to retain § 73.688 while removing similar references to the visual transmitter. We seek comment on these proposals.

We propose to delete §§ 27.60 (TV/DTV interference protection criteria) and 27.1310 (Protection of Broadcast Television Service in the 600 MHz band from wireless operations), which concern the protection of TV stations on certain channels by wireless services. All of these protections are for channels above channel 37, and thus are no longer relevant because the completion of the digital TV transition and the incentive auction and repacking process reassigned channels in that range for wireless use. We seek comment on this proposal.

Reorganization of Subpart E—Television Broadcast Stations

Full power television began to transition to digital with the passage of the Telecommunications Act of 1996, and ended on June 12, 2009, when full power television stations commenced digital-only operations. *See Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service,* MM Docket No. 87–268, 12 FCC Rcd 12809 (1997) (Implementing television broadcast portions of the Telecommunications Act of 1996) (subsequent citations omitted); *see* Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996)). During the transition, the Commission was required to adopt a number of rules dealing with, *inter alia,* special relaxed digital to digital interference standards necessary to take into account that most stations were operating both an analog and digital channel during the transition, digital construction deadlines, minimum digital operating schedules, analog to digital and digital to analog interference rules, and digital to digital interference rules post-transition. For an overview of the numerous rulemaking proceedings, see *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television,* MB Docket No. 00–39, Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 5946 (2001) (subsequent citations omitted); *Second Periodic Review,* 19 FCC Rcd 18279 (2004); *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television,* MB Docket No. 07–91, Report and Order, 23 FCC Rcd 2994 (2007) (subsequent citations omitted). Many of these rules were temporary and meant to be effective only during the DTV transition. For example, § 73.623(c)(2) (Minimum technical criteria for modification of DTV allotments included in the initial DTV Table of Allotments and for applications filed pursuant to this section) allowed petitioners and applicants to specify facilities that would result in an increase of up to an additional 2 percent of the population served by another station, provided that the station would not receive more than 10 percent interference in the aggregate. Post-transition, however, the level of permissible interference dropped to 0.5%, the rounding tolerance for zero. *See* 47 CFR 73.616(d). Others, however, had more long term application to digital operations. Because the more long term rules were adopted at the same time as temporary rules, the long term rules are currently not organized in a straight forward or user-friendly manner. For example, § 73.623(d) (Minimum geographic spacing requirements for new TV allotments) is in the rule section dealing with TV applications and changes to TV allotments. This paragraph, however, deals with new allotments, and might

more logically belong in § 73.622 (Table of TV Allotments). In addition, there are instances where the rules are duplicative. For example, 47 CFR 73.616(d) and (e) (Post-transition DTV station interference protection) and 73.623(c)(2)–(5) (DTV applications and changes to DTV allotments) both require the use of OET Bulletin No. 69. Some of the specific parameters in § 73.623(c) are outdated (such as those that refer to the 2 percent and 10 percent aggregate pre-transition interference standard), but most of the remaining rule text is directly duplicative of § 73.616(d) and (e) (for example, both discuss how to determine DTV to DTV interference using OET Bulletin 69, that the minimum adjacent channel technical criteria does not apply to channels 4 and 5, 6 and 7, and 13 and 14, because of unique spacing between these channel, and how to determine interference to Class A television stations). Thus, as stated above, we propose deleting paragraphs 73.623(c)(2)–(5). In addition, there are cases where an analog rule and a digital rule are both found in the rules with similar text, such as §§ 73.625 (DTV coverage of principal community and antenna system) and 73.685 (Transmitter location and antenna system).

To make the organization of the rules more practical and the rules easier to find, we propose to reorganize subpart E, while also offering some minor clarifications and amendments to some of the rules. First, we propose to create a new § 73.611 (Emission levels and mask filters) which would relocate, verbatim, the language from § 73.622(h)(1) and (2), which is currently part of the Table of TV Allotments section. These rules involve the permissible level of emissions outside the authorized channel of operation and how attenuation of emission levels is to be measured at the output terminals of the transmitter, including any filters that may be employed. *See Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service,* MM Docket No. 87–268, Sixth Report and Order, 12 FCC Rcd 14588, 14676–77, para. 195 (1997). We believe this change will improve the organization of the rules because this technical rule has little direct relationship to the Table of TV Allotments. We seek comment on moving this language to a separate stand-alone rule for easier reference.

We propose to remove the analog power limits from § 73.614(b) (Power and antenna height requirements) and replace them with the digital power limits currently found in § 73.622(f)(5)–(8) (Table of TV allotments), and we propose to clarify that all applications for new full power television stations, applications for changes in authorized full power television stations, and petitions for changes to the Table of TV Allotments must comply with these requirements. 47 CFR 73.614(b) (Power and antenna height requirements). This would make § 73.622(f)(4) redundant, as § 73.622(f)(8) also contains a 1000 kW limit for UHF stations, and we thus propose to delete § 73.622(f)(4). The portions of the rule in § 73.622(f)(5)–(8) focus on power and antenna height requirements. Sections 73.622(f)(6)–(8) set forth the digital power limits and (f)(5) sets forth an exception which is commonly referred to as the ''largest station in the market rule.'' While these power and antenna height requirements are sometimes referred to in Table of Allotment proceedings, they are also frequently considered in processing applications, and so we believe including these provisions in a separate paragraph will make them easier to reference regardless of whether an allotment or an application is being considered. We also propose to clarify in the newly placed § 73.614(b)(6), that the largest station in the market provision only allows a station to exceed the maximum height for a given channel and zone, and not the maximum power for that channel and zone. This addition to the rule is consistent with a clarification adopted by the Commission in 2001. *See Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television,* MM Docket No. 00–39, Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 5946 (2001) (subsequent history omitted). Specifically, the Commission clarified that under § 73.622(f)(5), ''the maximum ERP limits . . . may not be exceeded.'' *Id.* at 5974, para. 74. Instead, ''[t]he 'largest station' provision applies only where the rules normally require a reduction in the maximum power because a specified antenna HAAT is exceeded. That is, it does not allow power higher than the maximum ERP to compensate for an antenna HAAT that is lower than the value specified in the rule.'' *Id.* We also propose to delete § 73.614(b)(7) (Power and antenna height requirements) as duplicative of § 73.625(c)(1) (DTV coverage of principal community and antenna system). *See* 47 CFR 73.614(b)(7) and 73.625(c)(1). We further propose to retain for digital operations a requirement that existed for analog operations that applications will not be accepted for filing if they specify less than a minimum effective radiated power of 100 watts because the Media Bureau staff already applies this minimum level in routine processing and we do not believe it is in the public interest for full power television stations to operate with what is essentially a low power facility. *See* 47 CFR 73.614(a) (Minimum power). Finally, we propose that for stations requesting DTS operation pursuant to § 73.626 (DTV distributed transmission systems) that this requirement apply to at least one site in the DTS. We seek comment on these proposals.

We also propose to collect provisions on related matters that are currently spread over various rules and group them together. First, we propose to create a new § 73.617 (Interference protection of other services) which collects provisions from §§ 73.623(e) (Protection of land mobile operations on channels 14–20), 73.687(e)(3)–(4) (this section requires stations operating on channel 14 to take special precautions to avoid adjacent LMRS facilities and sets forth various steps stations should take to identify and resolve potential interference. *See also Resolution of Interference Between UHF Channels 14 and 69 and Adjacent-Channel Land Mobile Operations,* MM Docket No. 87–465, Report and Order, 6 FCC Rcd 5148 (1991)) 73.623(f) (''Parties requesting new allotments on channel 6 be added to DTV Table must submit an engineering study demonstrating that no interference would be caused to existing FM radio stations on FM channels 200–220''), and 73.685(d) (we also propose to change ''blanket area'' to ''blanketing,'' which reflects the updated term now used by stakeholders.). We propose to amend the rule to add a note to reference and explain the existence of a granted waiver with respect to the community of Los Angeles, California allowing the County of Los Angeles to use channel 15 in Los Angeles for public safety communications, and propose to update the city center coordinates *supra.* Most of these rules are used for both licensing and allotments and we believe they will be easier to identify and use if gathered into one section rather than scattered among various rules. We seek comment on this proposed restructuring. We also propose to include a new paragraph 73.617(e) to codify a long standing Commission practice to place a condition on all television broadcast station authorizations that result in a change in coverage area, and all authorizations for new stations, which requires TV broadcasters to identify and notify hospital and other health care

facilities within the station's coverage area to avoid interference to medical telemetry devices. Such devices are authorized under 47 CFR 15.242 (Operation in the bands 174–216 MHz and 470–668 MHz) and 47 CFR part 95 subpart H. This condition is consistent with a current practice agreed to between the Commission and the Food and Drug Administration in 1998 and we believe codifying this practice in our rules will ensure that all licensees are aware of this requirement to avoid interference to medical telemetry devices. *See Joint Statement of the Federal Communications Commission and the Food and Drug Administration Regarding Avoidance of Interference Between Digital Television and Medical Telemetry Devices, https://transition.fcc.gov/Bureaus/Engineering_Technology/News_Releases/1998/nret8003.html* (Mar. 25, 1998). We seek comment on this proposal.

We propose to create a new § 73.618 (Antenna location and principal community coverage), which would relocate, verbatim, the language from 73.625(a) (DTV coverage of principal community and antenna system). We also propose to centralize multiple existing rules into one rule that would include instructions on how to determine the protected facilities of a television allotment (47 CFR 73.616(c) (Post-transition DTV station interference protection), as amended), the noise-limited contour level of a television station (47 CFR 73.622(e) (Digital television table of allotments), as amended *supra*), how the noise-limited contour is determined (47 CFR 73.625(b) (DTV coverage of principal community and antenna system), as amended *infra*), and the purposes for which field strength contours are used (47 CFR 73.683(c) (Field strength contours and presumptive determination of field strength at individual locations)). We therefore propose to include these existing requirements in a new § 73.619 (Contour and service areas), and update the section heading of § 73.683 to ''Presumptive determination of field strength at individual locations,'' in order to remove reference to portions of the rule that are relocated to the new § 73.619. Similarly, we propose to create a new § 73.620 (Interference calculation and protection of TV broadcast services) that will include the requirements currently spread throughout multiple rules in § 73.623(c) (describes the minimum technical criteria for modification of DTV allotments included in the initial DTV Table of Allotments and for applications filed pursuant to this section, as amended *supra*) and §§ 73.616(d) and (e) (merged into a new § 73.620(a)–(d)). *See* 47 CFR 73.616 (Post-transition DTV station interference protection) as amended *supra.* Additionally, we propose to move the rule from § 73.616(g) to a new § 73.620(f). *See* 47 CFR 73.616(g) (relating to interference protection of ATSC 3.0 stations). We believe that this revised organization of these requirements will make the rules easier to identify and use, and eliminate duplicate versions of some of these rules. We seek comment on these proposals.

We propose to modify §§ 73.622 (Television table of allotments) and 73.623 (TV application processing) to separate out rules specific to the Table of TV Allotments and application processing procedures into separate sections. In § 73.622(a), we propose to modify the language to clarify the rule sections specific to petitions to modify the Table of TV Allotments. Due to this change, § 73.616(a) (TV station interference protection) becomes largely duplicative of this proposed § 73.622(a) and we thus propose to delete § 73.616(a). We also propose to remove (a)(1) and (a)(2) as redundant with the content of § 73.603 (Numerical designation of television channels). We propose to redesignate the language in § 73.622(d)(2) as § 73.622(d), clarify the rule text to indicate this paragraph applies to all allotments, and clarify that the ''reference coordinates'' for each allotment are those of the authorized facility, or for new allotments, the coordinates given in the order amending the Table of TV Allotments. Section 73.616(b) is duplicative of this proposed § 73.622(d) and we thus propose to delete § 73.616(b). We also propose editorial changes for clarity in § 73.622(d). Finally, we propose to relocate the text from § 73.623(d), relating to the minimum distance separations for new TV allotments, to a new § 73.622(k). In § 73.623(a), we propose to modify the language to clarify the rule sections specific to application processing and remove discussion of modifications to the Table of TV Allotments. We propose to relocate the text from § 73.622(c), regarding the availability of channels for application, into § 73.623(b). Finally, we propose to update cross-references found in § 73.623(h) and update the section heading to ''TV application processing priorities'' in order to clarify its purpose. We seek comment on these proposals.

We propose to reorganize § 73.624(b) (Television broadcast stations) for clarity by splitting some of the text in subpart (b) into a new subpart (b)(1) (requiring stations broadcasting in ATSC 1.0 to transmit an over the air signal at no direct charge to viewers). We note that nothing in this proposal alters the application of this rule to ATSC 3.0. We propose to relocate § 73.685(h) (Transmitter location and antenna system), pertaining to AM stations, to become new § 73.625(c)(4)(iii) (TV coverage of principal community and antenna system). We also propose to relocate § 73.682(a)(14) (TV transmission standards), regarding the use of elliptically- and circularly-polarized antennas, to become a new § 73.625(d) (TV coverage of principal community and antenna system). While the rest of § 73.682(a) related specifically to analog station operations, we believe this specific subpart of (a)(14) applies to all stations and note that its content is consistent with the functions in LMS applicable to applications. Thus, we tentatively conclude it should be relocated to make it easier to identify by users of our rules. We seek comment on these proposals.

While the current rule structure has become disjointed over the years, and is only exacerbated by the deletion of obsolete portions of the rules, we understand that the structure is also familiar to many users and we recognize that many licensees, counsel, and other users of our rules may have concerns about a reorganization to our rules that have been in the same location or under the same section number for many years. We propose to mitigate that concern by updating cross-references to the rules reorganized as described herein, and in Table 1: Cross-references below, as well as providing cross-references to the new location of a rule that has been relocated in the location it was previously found. The Commission has previously added cross references to its rule sections within its rules. *See, e.g., October 2021 Order* at para. 12 (''We also amend § 73.606 of our rules by . . . adding a cross-reference to ''§ 73.622(j)'', which sets forth the updated Table of Allotments adopted in this Order.''). We believe that providing these cross-references would make it easier for users to become accustomed to the new structure. We seek comment on this proposal.

TABLE 1—CROSS-REFERENCES

Instead of referencing . . .	Reference . . .
§ 73.614(b)(7)	§ 73.625(c)(1).
§ 73.616(a)	§ 73.622(a).
§ 73.616(b)	§ 73.622(d).
§ 73.616(c)	§ 73.619(d).

TABLE 1—CROSS-REFERENCES—Continued

Instead of referencing . . .	Reference . . .
§ 73.616(e)	§ 73.620(d).
§ 73.616(g)	§ 73.620(f).
§ 73.622(b)	§ 73.622(j).
§ 73.622(c)	§ 73.623(b).
§ 73.622(e)	§ 73.619(c).
§ 73.622(f)(5)	§ 73.614(b)(6).
§ 73.622(f)(6)	§ 73.614(b)(1).
§ 73.622(f)(7)	§ 73.614(b)(2).
§ 73.622(f)(8)	§ 73.614(b)(3).
§ 73.622(h)	§ 73.611.
§ 73.622(i)	§ 73.622(j).
§ 73.623(c)(1)	§ 73.618(a).
§ 73.623(c)(2)	§ 73.620.
§ 73.623(c)(3)	§ 73.620(b).
§ 73.623(c)(4)	§ 73.620(a).
§ 73.623(c)(5)	§ 73.620(d).
§ 73.623(d)	§ 73.622(k).
§ 73.623(e)	§ 73.617(a).
§ 73.623(f)	§ 73.617(c).
§ 73.623(g)	§ 73.620(e).
§ 73.625(a)	§ 73.618.
§ 73.625(b)	§ 73.619(b).
§ 73.683(c)	§ 73.619(a).
§ 73.685(b)	§ 73.618.
§ 73.685(d)	§ 73.617(d).
§ 73.685(f)	§ 73.625(c).
§ 73.687(e)	§ 73.617(b).

Protection of Land Mobile Radio Service

Section 73.623(e) of the rules requires full power and Class A television stations to protect certain channels for use by LMRS in thirteen U.S. cities. 47 CFR 73.623(e) (Protection of land mobile operations on channels 14–20). In the proposed reorganization, this would be moved to new § 73.617(a). For television stations that use or would use channels 14 through 20, the rule specifies a distance of 250 kilometers from the city center of a co-channel land mobile operation, or 176 kilometers from the city center of an adjacent channel land mobile operation. The set of coordinates for the city centers were calculated based on the 1927 North American Datum (''NAD 27''). As a result of improvements in technology and measuring capabilities, NAD 27 has been superseded by the 1983 North American Datum (''NAD 83''). The Commission's Office of Engineering and Technology and Office of the Managing Director have previously explained that ''[g]eodetic datum is a set of constants specifying the coordinate system used for calculating the coordinates of points on the Earth. NAD 83 was developed based on satellite and remote-sensing measurement techniques, and provides greater accuracy than the older NAD 27.'' *Amendment of Parts 1, 2, 25, 73, 74, 90, and 97 of the Commission's Rules to Make Non-Substantive Editorial Revisions to the Table of Frequency Allocations and to Various Service Rules,* Memorandum Opinion and Order, 23 FCC Rcd 3775, 3796, para. 61, n.101 (OET/OMD 2008). Because it provides greater accuracy and the older NAD 27 is outdated, we propose to amend the rule to use NAD 83 for purposes of specifying these coordinates. *Id.* We further tentatively conclude that updating the coordinates in the rule to NAD 83 would serve the public interest by conforming the values with the coordinate system used in the Commission's LMS database and with those found in § 90.303(b) of the rules, which define the service that § 73.623(e) protects. Section 90.303(b) (Availability of frequencies) defines the specific center points used to permit land mobile operations, which represent the specific locations that § 73.623(e) is designed to protect. *See* 47 CFR 90.303(a) (stating that ''coordinates are referenced to the North American Datum 1983 (NAD83)'') and (b). As such, our proposal to conform the values in these rules would help to ensure that land mobile operations are more appropriately considered and protected from full power and Class A operations. We made a similar proposal in the *Part 74 NPRM* at para. 12. We seek comment on this proposal.

We also propose to amend § 73.1620(a)(1) (Program tests) to remind full power and Class A television stations on channel 14 of the requirement found in § 73.687(e)(4)(iii) that they request Program Test Authority (''PTA'') prior to commencing operation of new or modified facilities. We further propose to move 47 CFR 73.687(e)(3)–(4) to 73.617(b). We also propose to include a new sentence codifying the practice of requiring LPTV and translator stations on channel 14 to request PTA prior to beginning operation of new or modified facilities. We believe that adding rule text reflecting this practice consistently across all television services will better reflect the purpose of the requirement to protect existing land mobile operations. We seek comment on these proposed changes.

Coverage Area—Determining Coverage

Section 73.625(b) of the Commission's rules describes how coverage and height above average terrain (HAAT) are to be calculated or determined. 47 CFR 73.625(b) (DTV coverage of principal community and antenna system—Determining coverage). In the proposed reorganization, this would be moved to § 73.619(b) (Contours and service areas—Determining coverage). This rule is largely derived from what was formerly § 73.684(d) and (f) adopted by the Commission in December 1963. *See* 28 FR 13572, 13678–79 (rel. Dec. 14, 1963) (§ 73.684 (1963)). We propose changes to certain procedures contained in § 73.625(b) which we believe are obsolete, unnecessary, and are otherwise superseded by the software based tools that the FCC and industry use to prepare and process applications.

We propose to remove the second sentence of paragraph (b)(2), which indicates that when the relative field strength at a depression angle is 90% or greater, the 100% value should be used. This would create a discontinuity in the contour, and is inconsistent with how software-based tools used to process and prepare applications function. We seek comment on this proposal.

We propose to eliminate the requirement to produce and submit profile graphs and to streamline the section in order to bring it into line with modern software-based tools used to determine contours and HAAT today. Specifically, the fifth and sixth sentences in paragraph (b)(4) of § 73.625 discuss the creation and submission of a radial in the direction of the community of license. *See* § 73.684(d) (1963) (§ 73.625(b)(4) was largely adapted from § 73.684(d), and § 73.684(d) itself had been condensed since the 1963 version of the rule. The 1963 version more clearly details the purpose and execution of the rule than the current text.). The rule does not require the use of a radial in the direction of the community of license in any other calculations, so with the elimination of the requirement to produce and submit profile graphs of radials, a rule that requires the calculation of this radial becomes unnecessary. Moreover, the software-based tools the Commission and industry use to process and prepare applications do not produce this radial. As such, we propose to delete the language. Paragraph (b)(4) also contains similar detail in the seventh and eighth sentences explaining how and when to produce and submit a profile graph for radials over water or foreign territory. *Id.* Again, with the elimination of the requirement to produce and submit profile graphs of radials, we believe this calculation for radials over water or foreign territory is unnecessary. The rule itself does not require the radials to be used in any other calculations and automated software used by the Commission and industry does not do this. As such, we propose to delete this language. We also propose to delete the companion language in § 73.681 in the definition of ''antenna height above average terrain.'' We seek comment on these proposals.

Next, paragraph (b)(4) describes how to plot the radials on a graph and provides a range of options for the number of points of elevation to use in each radial. We propose to conform the requirement to reference the TVStudy software currently used for preparing and processing applications, and specify the use of 10 points per kilometer in all circumstances consistent with present practice found in the TVStudy software used by the Commission and licensees to process and prepare applications. *See* Federal Communications Commission, Office of Engineering and Technology, *TVStudy Interference Analysis Software, https://www.fcc.gov/oet/tvstudy* (the ''FCC Contours'' screen in the ''Parameters'' tab of TVStudy provides a default value of 10 points per kilometer using the default Interference Check template). We seek comment on this proposal.

We propose additional deletions in the rule that we believe are also unnecessary. There are several sentences in paragraph (b)(4) which describe how such graphs should be formatted for submission to the FCC. For example, the rule specifies that the graphs may be plotted on ''rectangular coordinate paper'' or on ''special paper which shows the curvature of the earth.'' *See also* § 73.684(d) (1963). Because we propose to eliminate the requirement to submit profile graphs, we also propose to delete the formatting requirements. The rule also provides multiple options on how to obtain elevation points. The software currently used by the Commission and industry, however, simply averages the points as provided in the first option. We propose to delete that text on options to obtain elevation points and clarify the use of the average of points elsewhere in the paragraph. Finally, we propose to add a sentence clarifying that actual calculated values are used to determine the HAAT, and to eliminate the final two sentences of paragraph (b)(4) which are no longer used with the conversion from analog to digital. Specifically, this language is no longer necessary due to the change from the requirements of providing a city grade strength signal of 74–80 dBu, depending on channel, to a principal community strength signal of 35–48 dBu depending on channel. The last two sentences of § 73.625(b)(4) are derived from the last two sentences of § 73.684(f) (1963), which addressed a situation where the adopted predictive coverage methodology would result in a negative HAAT or an HAAT below 100 feet at a number of radials at two and 10 mile intervals. In that case, an applicant could make a supplemental showing. As an example, when a supplemental showing could be made, the rule explained that ''a mountain ridge may indicate the practical limit of service although the prediction method may indicate otherwise. In such cases the prediction method should be followed but a supplemental showing may be made concerning the contour distances as determined by other means.'' To give an example why the last two sentences of § 73.625(b)(4) are obsolete, the standard contour prediction method would show that the television stations in Juneau, Alaska, had a negative HAAT due to surrounding terrain even though the stations' transmission facilities are located in Juneau, which is surrounded by mountains. With the conversion from analog to digital, the use of the city grade contour to determine community coverage was replaced with the use of the minimum service level contour, which tends to be significantly larger, making the issue of an inability to reach the community of license that this rule was designed to capture significantly less likely. We see comment on these proposals.

Section 73.625(b)(5) specifies a number of paper maps which should be used to prepare the profile graphs described in paragraph (b)(4), and to determine the location and height above sea level of the antenna height. *See* 47 CFR 73.625(b)(5). This rule is largely derived from § 73.684(g) (1963). We believe that multiple references to various sources of paper maps contained in the rule are outdated methods to make these types of calculations. We therefore propose to remove those references to outmoded paper maps and replace them with a reference to the National Elevation Dataset and other similar bald earth terrain datasets which are used by modern automated software currently used by the Commission and industry. In a new paragraph (b)(6), we propose to clarify that we generally expect these calculations to be done via computer, versus the preference for paper calculations that was specified previously, and then indicate that to the extent a submission to the Commission uses sources different from those officially reflected in our rules, those sources should be clearly identified in the submission. For example, community coverage is demonstrated by providing a map, which applicants sometimes produce using software like V-Soft Probe. Applicants should clearly identify the software being used to produce their engineering showings. We seek comment on these proposals.

Antenna Patterns

We propose to clarify, in § 73.625(c)(3)(ii) of the rules, that the horizontal power is to be higher than or equal to the vertical power in all directions, and require documentation that the antenna meets this requirement. This proposed requirement is consistent with stations being primarily horizontal, with a possible vertical component less than or equal to the horizontal component. Most stations already submit this documentation in their applications. This clarification is consistent with the requirements contained in § 73.682(a)(14). *See* 47 CFR 73.682(a)(14) (TV transmission standards) (''It shall be standard to employ horizontal polarization.''). *See also* 47 CFR 73.316(a) (FM antenna systems). We also propose to update the rule to reflect that the LMS filing system permits an alternate method of specifying mechanically beam tilted facilities. The proposed rule indicates the alternate method is preferable because it provides a three-dimensional representation of the antenna, allowing for more accurate predictions with OET Bulletin No. 69. But we continue to allow the previous method in order to avoid imposing any additional burden on stations that were previously authorized using the previous mechanical beam tilt method. We seek comment on these proposals.

Section 73.625(c)(3)(v) currently requires that horizontal plane patterns be plotted ''to the largest scale possible on unglazed letter-size polar coordinate paper.'' This requirement is outdated and not consistent with current licensee and Commission staff practices. We propose to instead require licensees to submit patterns in the form of a .pdf attachment to an application filed in LMS, and propose to clarify that similar plots are required for elevation or matrix patterns submitted in the LMS form. *See* proposed §§ 73.625(c)(3)(vi) and 73.625(c)(3)(vii). This approach would provide flexibility to applicants and conform to modern practices. We seek comment on this proposal.

Subscription TV (STV) Rules

Sections 73.641 through 73.644, 73.4247, 73.6026, and 74.732(e) contain the rules that allowed analog full power, Class A, and low power television stations to offer a subscription television service ''for a fee or charge.'' *See* 47 CFR 73.641(b). *See generally Amendment of Part 73 of the Commission's Rules and Regulations in Regard to Section 73.642(a)(3) and other Aspects of the Subscription Television Service,* Docket No. 21502, Fourth Report and Order, 95

FCC 2d 457 (1983) and other Commission Orders and Notices in Docket No. 21502 at nn.1–3. Under these rules, analog stations could offer television services during part of the broadcast day, usually during the evening hours, on a subscription basis by sending scrambled signals through the air that could be decoded by a device that the subscriber used and had installed by the STV provider at their television receiver. *Amendment of Part 73 of the Commission's Rules and Regulations in Regard to Section 73.642(a)(3) and Other Aspects of the Subscription Television Service,* Docket No. 21502, Third Report and Order, 90 FCC 2d 341, 344–5, para. 9 (1982).

As of May 1, 1982, there were 27 analog stations that were operating in an STV mode in 18 different markets serving over 1,300,000 subscribers. *Id.* at 344, para. 8. Upon transitioning to digital in 2009 however, digital television stations are required to transmit one over-the-air video program signal at no direct charge to viewers on their 6 MHz channel and are permitted to provide STV-type services on an ancillary or supplementary basis to their primary digital television service. *See* 47 CFR 73.624(a) and (c) (Digital television broadcast stations); 74.790(i) (Permissible service of TV translator and LPTV stations) (television stations are permitted to offer services of any nature, consistent with the public interest, convenience, and necessity, on an ancillary or supplementary basis, including ''subscription video''). With the elimination of analog service, there are no full power television stations operating pursuant to the STV rules and LMS does not permit the filing of applications or requests to operate in an STV mode. Sections 73.642(b) (Subscription TV service) and 74.732(e) (Eligibility and licensing requirements) require that stations notify the Commission when they commence STV operations, and that full power and Class A stations notify the Commission when they discontinue STV operations or change their encoding equipment. The Bureau has not received any such filings in at least the past 25 years. Accordingly, these STV rules are obsolete and we propose to eliminate them. *See* 47 CFR 73.641 (Subscription TV definitions), 73.642 (Subscription TV service), 73.643 (Subscription TV operating requirements), 73.644 (Subscription TV transmission systems), and 73.4247 (STV: Competing applications). We seek comment on this proposal.

If we adopt this proposal, we would also amend part 73 and part 74 rules to remove references to STV and ''subscription television service.'' *See* 47 CFR 73.1201(d) (Station identification for subscription television stations); 74.701(f) (Low power TV station); 73.682(b) (Subscription TV technical systems); 73.6026 (deleting cross-references to 73.642–73.644) (Broadcast regulations applicable to Class A television stations); and 74.732(e) (Eligibility and licensing requirements). We seek comment on this proposal.

Special Criteria for Converting Vacant Commercial Channels to Reserved Status

In 2000, the Commission adopted a needs based test for future rulemakings allowing noncommercial educational (NCE) entities to request that ''non-reserved channels not already in the Table of Allotments be added and reserved for NCE use.'' *See Reexamination of the Comparative Standards for Noncommercial Educational Applicants,* MM Docket No. 95–31, Report and Order, 15 FCC Rcd 7386, 7434, para. 114 (2000); *Reexamination of the Comparative Standard for Noncommercial Educational Applicants,* MM Docket No. 95–31, Second Report and Order, 18 FCC Rcd 6691 (2003). This needs-based test is reflected in § 73.622(a). 47 CFR 73.622(a) states in relevant part:

> Where there is only one technically available channel available in a community, an entity that would be eligible to operate a noncommercial educational broadcast station may, prior to application, initiate a rulemaking proceeding requesting that an unoccupied or new channel in the community be changed or added as reserved only for noncommercial educational broadcasting upon demonstrating that the noncommercial educational proponent would provide a first or second noncommercial educational TV service to 2,000 or more people who constitute 10% of the population within the proposed allocation's noise limited contour.

Since the Commission adopted this needs based test in 2000, the Media Bureau has never been asked to apply it to television stations. Further, the television band has been reallocated and repacked from channels 2–69 to channels 2–36, significantly decreasing the number of available channels. We therefore propose to amend § 73.622(a) to remove this language as we do not believe it serves a practical purpose in the current environment. We do not intend, however, to eliminate the ability of an NCE entity to reserve one of the few vacant television channels currently in the Table of TV Allotments. We note that there remain nine channels in the Table of TV Allotments that are allotted but not currently licensed. These channels were recently offered in Auction 112 but none of the channels received any bid offers and they were returned to the Commission. *See Auction of Construction Permits For Full Power Television Stations Closes,* Public Notice, DA 22–659 (rel. June 23, 2022). We note that an NCE entity may still file a rulemaking petition to request that the Commission reserve the channel for noncommercial educational use, without being required to rely on the special process enumerated in § 73.622(a). We seek comment on this proposal.

Other Technical and Miscellaneous Updates

Special Service Authorization. Section 73.3543 (Application for renewal or modification of special service authorization) provides that no new special service authorizations may be issued after 1958, however, renewals or modifications will be considered in certain circumstances. The Media Bureau is unaware of any such authorizations today, and thus we tentatively conclude the rule is obsolete and can be deleted. We therefore propose to delete the rule and seek comment on this proposal.

Broadcast Data Bases. Section 0.434 (Data bases and lists of authorized broadcast stations and pending broadcast applications) refers to Broadcast Application Processing System (BAPS), which is a legacy database system that has not been in use at the Commission for many years. The Media Bureau currently uses LMS for application processing, which replaced the prior Consolidated Database System (CDBS) system over the past few years (except with respect to certain AM operations), which itself replaced BAPS around the year 2000. Thus, the reference to BAPS is obsolete and we propose to delete it and seek comment on this proposal. We additionally propose to remove the word ''periodically'' since an updated LMS download is provided daily, remove the link to ''*ftp.fcc.gov*'' since LMS data is not provided there, and update the reference to ''mass media services'' to instead specify ''Media Bureau.'' We also propose to delete the sentences stating that paper copies of lists of stations and applications are available for inspection at the Commission or on microfiche at the Commission's Reference Information Center. We further propose to delete the sentence that lists can be purchased from the FCC's duplicating contractor since the Commission has not contracted with a commercial duplicating firm pursuant to § 0.465(a) of the rules for a number

of years. We seek comment on these proposals.

Distributed Transmission System Rule Clarification. In January 2021, the Commission adopted updated rules in § 73.626 relating to Distributed Transmission Systems. *See Rules Governing the Use of Distributed Transmission System Technologies Authorizing Permissive Use of the ''Next Generation'' Broadcast Television Standard,* MB Docket No. 20–74 and GN Docket No. 16–142, Report and Order, 36 FCC Rcd 1227 (2021) (*2021 DTS Order*). Since that time, questions have arisen about how the rules are to be applied. For example, the rule text makes several references to the term ''reference facility'' without defining that term, and appears to inaccurately conflate the reference point with the coordinates of the facility which produces the authorized service area. To make the intent and application of the rule less ambiguous, we propose to modify language in § 73.626(b) and (f)(2). We propose to define the term ''authorized facility'' (the proposed § 73.626(b) states that ''For purposes of compliance with this section, a station's 'authorized service area' is defined as the area within its predicted noise-limited service contour determined using the facilities authorized for the station in a license or construction permit for non-DTS, single-transmitter-location operation (its ''authorized facility'').'') and then replace all uses of the term ''reference facility'' with the term ''authorized facility'' in the appropriate locations. *See* proposed § 73.626(f)(2)(i)–(iii). The proposed § 73.626(b) states that ''For purposes of compliance with this section, a station's 'authorized service area' is defined as the area within its predicted noise-limited service contour determined using the facilities authorized for the station in a license or construction permit for non-DTS, single-transmitter-location operation (its ''authorized facility'').'' We further propose to replace the term ''reference point'' with ''site of its authorized facility'' in places where the term ''reference point'' is improperly used. *See* proposed § 73.626(f)(2)(ii)–(iii). Finally, we propose to clarify when specifically the Table of Distances values should be applied. *See* proposed § 73.626(f)(2)(i)–(ii).We believe this clarifying language will better reflect the method described in the *2021 DTS Order* and used in processing such applications. We also propose to remove language from § 73.626(f)(2) which is improperly specific to the station's authorized service area. As written, the language incorrectly implies that the Table of Distances circle is not applicable here. We seek comment on these proposals.

Transport Stream ID. All full-power and Class A TV stations are assigned a unique transport stream ID (TSID), which is required to be transmitted in order to provide the Program and System Information Protocol (PSIP) data required by § 73.682(d) (Broadcast television transmission standard). Consistent with that rule, we propose to clarify that all such stations must broadcast with their assigned TSID during their hours of operation. *See* proposed § 73.1201 (Station identification); *see also* proposed § 74.783(d) in the *Part 74 NPRM* at para. 17. In its *Second Periodic Review,* the Commission stated that ''broadcasters are required to transmit the TSIDs assigned for their stations in their digital transmission.'' *See Second Periodic Review,* 19 FCC Rcd at 18347–48, para. 153. We believe that it is in the public interest to move this requirement into a separate rule for ease of reference. Similarly, we propose the same requirement with respect to a station's bit stream ID (BSID), which has the same function as the TSID, but in the ATSC 3.0 context, in order to promote consistency. We seek comment on these proposals.

Class A U.S.-Mexico Border Zone. Full power television stations are required to use full service masks to attenuate the power level of emissions outside their authorized channel of operation in specified amounts expressed in decibels (dB). *See* 47 CFR 73.622(h) (describing required attenuated power limits of emissions of frequencies outside the authorized channel of operation for full power television stations). Section 74.794, which allows LPTV/TV translators to specify use of a simple, stringent, or full service mask, also applies to Class A television stations. *See* 47 CFR 73.6024(d) and 74.794(a)(2). Section 74.794(a)(2)(i)–(iii) defines the required attenuated power limits of emissions outside the authorize channel of operation for each type of mask. The Commission's rules require coordination of applications in border regions with the neighboring countries' appropriate regulatory officials. Under the *Exchange of Coordination Letters with IFT Regarding DTV Transition and Reconfiguration of 600 MHz Spectrum,* signed between the FCC and Mexico's Instituto Federal de Telecomunicaciones (IFT) in July 2015, the use of Tables 1 and 6 were approved for television station realignment. *See* Letter to Ricardo Castañeda Alvarez Director General de Ingenieria y Estudios Técnicos, IFT, from Mindel De La Torre, Chief, International Bureau (July 15, 2015) and Letter to Mindel De La Torre, Chief, International Bureau, from Alejandro Navarrete Torres, IFT (July 15, 2015) (collectively, ''Exchange of Coordination Letters with IFT Regarding DTV Transition and Reconfiguration of 600 MHz Spectrum''). *See* International Agreements, available at: *https://www.fcc.gov/general/international-agreements.* Class A stations approved by Mexico in Table 6 are grouped with full-service stations. There is no allowance for use of a simple or stringent emission mask for any operation within these Tables; however, § 73.6024(d) applies to coordination of stations in proximity of the U.S. border with Mexico. It is the Media Bureau staff's experience that IFT routinely requests that applications submitted for coordination of Class A stations specify a full-service emission mask, and if such applications do not initially specify the full-service emission mask, IFT asks for it to be included in an amendment. This two-step process increases the processing burdens on the FCC, IFT, and stations, and results in delays in granting applications. Therefore, we propose to amend § 73.6024(d) to require Class A stations within 275 kilometers of the US-Mexico border to specify a full-service emission mask in any modification application. We seek comment on this proposal.

Class A Antenna System. We propose to delete language in § 73.6025(a) that we find is almost identical to that in § 73.625(c)(3). 47 CFR 73.6025(a) (Antenna system and station location) (setting forth required showing when proposing to use a directional antenna system) and 73.625(c)(3) (DTV coverage of principal community and antenna systems). These rule sections provide similar requirements regarding how applicants should describe and document antenna patterns submitted in their applications. Some sections are identical (specifically, § 73.625(c)(3)(iii) is identical to § 73.6025(a)(3), § 73.625(c)(3)(iv) is identical to § 73.6025(a)(4), and § 73.625(c)(3)(vi) is identical to § 73.6025(a)(5)), but in others there are a few minor differences. Specifically, comparing § 73.625(c)(3)(i) with § 73.6025(a)(1), although two sentences found in the latter concerning descriptions of antenna systems are not specifically contained in § 73.625(c)(3)(i), we believe these sentences are explanatory and sufficiently captured in the requirement in § 73.625(c)(3)(i) that a ''[c]omplete description of the proposed antenna

system'' be included. Currently, § 73.625(c)(3)(ii) also differs slightly from § 73.6025(a)(2) in that it specifies a different orientation of the included antenna plots, but is otherwise identical and would provide the same information to the Commission. We propose to modify § 73.625(c)(3)(ii). Finally, while there is no equivalent to § 73.625(c)(3)(v) in § 73.6025; that subpart merely describes the format of the otherwise-required tabulations. We propose to modify § 73.625(c)(3)(v). We are also proposing in this NPRM to add new §§ 73.625(c)(3)(vii) and (viii) to account for stations submitting elevation or matrix patterns. *See id.* We find that the very minor distinctions between the language in the two sections are insignificant and that no purpose is served by having two essentially duplicative rules in part 73. Class A licensees are required to comply with all part 73 regulations except for those that cannot apply for technical or other reasons. *Class A Report and Order,* 15 FCC Rcd at 6365, para. 23. Section 73.625(c)(3) is clearly a rule with which they can comply. We instead propose to also cross-reference § 73.625(c)(3) in § 73.6025(a), eliminating the duplication but making clear that the requirements in § 73.625(c)(3) continue to apply to Class A television stations. We seek comment on this proposal.

Minimum Video Program Requirements. As noted above, we propose to delete much of § 73.624(b). Section 73.6026 (Broadcast regulations applicable to Class A television stations) lists section 73.624 as a rule applicable to Class A stations. It also includes a note stating that ''Section 73.624(b) will apply only to the extent that such stations must also transmit at least one over-the-air video program signal at no direct charge to viewers of the digital Class A station.'' Such language is also included in 73.624(b) and so we propose to remove that text in 73.6026 as duplicative. We also propose to clarify that this change would mandate the use of a minimum 480i video resolution by Class A stations. This requirement is consistent with full-power and LPTV/translator stations (as proposed in the *Part 74 NPRM*), and we believe it is reasonable to also apply it consistently to Class A stations. *See Part 74 NPRM* at para. 25. We seek comment on this conclusion.

Transmitting Antenna Site. Section 73.683(c)(1), which we propose to move to new § 73.619(a)(1), refers to the estimation of a station's coverage area based on a ''particular transmitter site.'' We note that our application forms do not request information about the location of a station transmitter but of its antenna instead. Therefore, we propose to modify the language in the rule to refer instead to a ''particular transmitting antenna site.'' We believe this proposal is consistent with language that has been used in other parts of the rules (*see e.g.,* 47 CFR 73.622(d)), and with a proposal made in the *Part 74 NPRM. See Part 74 NPRM* at para. 24 (''Because the antenna location, rather than the transmitter location, is the relevant consideration in determining interference, service, and loss, as required by the Commission's rules and policies, we propose to delete § 74.751(b)(6) entirely regarding the transmitter's location, as it is not relevant in this analysis.''). Accordingly, we seek comment on this proposal.

Corrections To Inadvertent Oversights From Prior Rulemakings. In § 73.616(e), which we propose to relocate to new § 73.620(d) (Interference calculation and protection of TV broadcast services), the rule text appears to be incomplete and contradictory. Paragraph (1) indicates the OET Bulletin No. 69 method of determining coverage and interference shall be used, then indicates that ''[t]he threshold levels at which interference is considered to occur are:'' but none follow. Paragraph (2) implies the use of contour analysis to determine protection of Class A television stations, but does so while making use of the unspecified threshold levels from paragraph (1). Paragraph (3) indicates that a request for a waiver of the interference protection requirements of the rule may be made using the Longley-Rice terrain dependent propagation methods contained in OET Bulletin No. 69, in contradiction to paragraph (1) which specifies that OET Bulletin No. 69 shall be used. Because these elements make the requirements of the rule difficult to decipher, we propose to remove paragraphs (1), (2), and (3) entirely and streamline the remaining paragraph (e) as a new § 73.620(d), replacing the description of the OET Bulletin No. 69 in paragraph (1) with a cross-reference to paragraphs (a) and (b) of the new § 73.620, which specifies the same method. We seek comment on this proposal.

In the *October 2021 Order,* the Commission deleted § 73.623(g) as obsolete because it addressed the digital transition. *See October 2021 Order* at para. 13, n.44. Deletion of the section, however, inadvertently eliminated from the rules the allowance for negotiated agreements on interference among applicants and licensees. We propose to restore this allowance that was previously contained in § 73.623(g), modify the language to delete language referring to stations operating on channels allotted in § 73.622(b), the initial DTV Table, and place it in a new § 73.620(e). This would clarify in our rules that stations may continue to negotiate agreements on interference consistent with past and present practice. We seek comment on this proposal.

In the *Part 74 Order,* the Commission revised or removed certain paragraphs of § 74.787 to reflect the LPTV and translator transition from analog to digital operations, clean up duplicate sections that were contained in both the analog and digital portions of part 74, and provide accurate information about current Commission forms. *See Part 74 Order* at paras. 6–7, nn. 22 and 25–28. The *Part 74 Order* revised § 74.787(a)(5)(i) regarding applications for analog-to-digital replacement translators (DRTs) and digital-to-digital replacement television translators (DTDRTs) to state that ''[a]pplications for new DRTs and DTDRTs are no longer accepted.'' The *Part 74 Order* also removed the first sentence of paragraph (a)(5)(v). We propose to further amend the text of the rule by clarifying in the now first sentence of paragraph (a)(5)(v) that the pre-auction digital service area is the noise-limited contour of the full power station that was protected in the incentive auction repacking process and removing reference to a 2015 public notice. *See* 47 CFR 74.787(a)(5)(v) (Licensing); *see also Incentive Auction Task Force Releases Revised Baseline Data and Prices for Reverse Auction; Announces Revised Filing Window Dates,* Public Notice, DA 15–1296, 30 FCC Rcd 12559 (Nov. 12, 2015). Because we no longer allow applications for new applications for DTDRTs, we believe the reference to the public notice data is no longer necessary and the inclusion of the additional explanation of the pre-auction digital service area for stations that already hold DTDRTs provides a clearer definition. We seek comment on this proposal.

Cost-Benefit and Diversity, Equity and Inclusion Analysis

Finally, we seek comment on the benefits and costs associated with adopting the proposals set forth in this NPRM. In addition to any benefits to the public at large, are there also benefits to industry through adoption of any of our proposals? We also seek comment on any potential costs that would be imposed on licensees, regulatees, and the public if we adopt the proposals contained in this NPRM. Comments should be accompanied by specific data

and analysis supporting claimed costs and benefits.

As part of our continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, we invite comment on how the proposals set forth in this NPRM can advance equity in the provision of broadcast services for all people of the United States, without discrimination on the basis of race, color, religion, national origin, sex, or disability. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

Initial Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), pursuant to 5 U.S.C. 605(b), the Commission has prepared this Initial Regulatory Flexibility Act Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this notice of proposed rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified in the **DATES** section of this NPRM. The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, this NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

This NPRM seeks comment on a number of proposals as part of the Commission's effort to update its rules following the transition from analog to digital-only operations and the post-incentive auction transition to a smaller television band with fewer channels. This NPRM proposes to delete, update, or otherwise revise Commission rules that no longer have any practical effect given these historic changes. This NPRM also seeks to restructure subpart E of part 73 of the Commission's rules (47 CFR subchapter C, part 73), which largely consists of the technical licensing, operating, and interference rules for full power television. Finally, this NPRM proposes additional amendments to the full power and Class A rules, including technical updates and proposals to delete, update, and/or amend outdated rules.

This NPRM proposes to adopt revisions to part 73 to reflect that all television services have ceased analog operations, and the conversion to digital television technology. Similarly, this NPRM proposes to amend rule section headings and language in part 73 to remove references to DTV and digital television service since all television services have transitioned from analog to digital operations and thus, there is no further need to differentiate between two separate kinds of service. In addition, this NPRM proposes to delete outdated rules that are no longer valid given changes in Commission-adopted policy. This NPRM also proposes to update Commission rules to reference the current designation for form numbers, require electronic filing in LMS, and remove obsolete forms. In addition, this NPRM proposes to make a number of other corrections and updates to the full power television and Class A rules, including to correct inadvertent oversights in prior rulemakings.

In addition, this NPRM seeks to add an explanatory note to § 73.623 to reference and explain the existence of a granted waiver with respect to the community of Los Angeles, California. Section 73.623 of the rules requires television stations to protect certain channels for use by the land mobile radio service in thirteen U.S. cities listed in the rule. In 2008, the Commission's Public Safety and Homeland Security Bureau granted a waiver pursuant to § 337(c) of the Communications Act, as amended, allowing the County of Los Angeles to use channel 15 in Los Angeles for public safety communications. Because this channel is adjacent to two channels contained in § 73.623, this NPRM asserts that the public interest is served by including a Note explaining the existence of the 2008 waiver.

To reflect the fact that the post-incentive auction closed on April 13, 2017, this NPRM proposes to amend § 73.3700(a)(2) to add the citation to the *Channel Reassignment Public Notice* that was released by the Commission's Media and Wireless Telecommunications Bureaus and Incentive Auction Task Force announcing the completion of the auction and deadlines for stations assigned new channels through the repacking process to terminate operations on pre-auction channels. This NPRM also proposes to delete as obsolete certain definitions that relate to the bid options that were available to full power and Class A television broadcasters eligible to participate in the incentive auction. This NPRM proposes to delete as obsolete procedural rules that governed the post-incentive auction period for stations to transition off their pre-auction channel, which ended on July 13, 2020, including the portions of the rule pertaining to the special post-incentive auction displacement filing window which closed on June 1, 2018, and applied to low power television and television translator stations (''LPTV/TV translators'') displaced by the auction.

Regarding the listing of FCC policies in §§ 73.4000 *et seq.,* which provide certain FCC policies and citations related to all broadcast stations for the purpose of reference and convenience, this NPRM proposes to amend a number of rules that are now otherwise obsolete or require updates. For example, this NPRM proposes to update rules to reflect the availability of newer versions of procedures and Commission orders such as the ''The Public and Broadcasting'' procedure manual.

This NPRM proposes to delete obsolete language due to the passage of time and other changes in Commission policy, including language related to the protection of pre-transition DTV applications filed before December 31, 1999, or between December 31, 1999, and May 1, 2000, certain waiver requests related to the incentive auction, displacements of Class A stations due to digital channel allotment changes by full power television stations that have since been resolved, the period of construction for an original construction permit which tolled for certain reasons of international coordination during the DTV transition, the certification of equipment that the Commission no longer accepts, and references to mutually exclusive renewal proceedings for applications filed prior to May 1, 1995. This NPRM also proposes to delete past license renewal application filing dates for all radio and television broadcast stations, and provide updated dates.

During the course of the transition to from analog to digital television, the Commission adopted a number of rules, many of which were temporary and meant to be effective only during the transition. Others, however, had more long term application to digital operations. Because the more long term rules were adopted at the same time as temporary rules, the long term rules are currently not organized in a straight forward or user-friendly manner. As a result, this NPRM seeks to reorganize subpart E of part 73, including creating cross-references to the rules reorganized

for ease, in order to make the rules more practical and easier to find.

This NPRM also seeks comment on updating the coordinates found in § 73.623(e) from North American Datum (''NAD'') 27 to NAD 83 and otherwise conforming the values with the coordinate system used in the Commission's Licensing and Management System (''LMS'') database and with those found in § 90.303(b) of the rules, which define the service that § 73.623(e) protects.

In addition, this NPRM proposes to amend § 73.1620(a)(1) to remind full power and Class A television stations on channel 14 of the requirement found in § 73.687(e)(4)(iii) that they request Program Test Authority (''PTA'') prior to commencing operation of new or modified facilities. This NPRM also proposes to amend the rule to require LPTV and translator stations on channel 14 to request PTA prior to beginning operation of new or modified facilities.

This NPRM also proposes a number of changes to the rules which are obsolete, unnecessary, and are otherwise superseded by the software based tools that the Commission and industry use to prepare and process applications. Also, § 73.625 specifies a number of paper maps which should be used to prepare the profile graphs and to determine the location and height above sea level of the antenna height. This NPRM proposes to remove those references to outmoded paper maps and replace them with a reference to the National Elevation Dataset and other similar bald earth terrain datasets which are used by modern automated software currently used by the Commission and industry. This NPRM proposes to clarify that Commission staff generally expects these calculations to be done via computer, versus the preference for paper calculations that was specified previously, and then indicate that to the extent a submission to the Commission uses sources different from those officially reflected in the Commission's rules, those sources should be clearly identified in the submission.

This NPRM proposes to clarify, in § 73.625(c)(3)(ii) of the rules, that the horizontal power is to be higher than or equal to the vertical power in all directions, and require documentation that the antenna meets this requirement. This NPRM also proposes to update the rule to reflect that the LMS filing system permits an alternate method of specifying mechanically beam tilted facilities. The proposed rule indicates the alternate method is preferable because it provides a three-dimensional representation of the antenna, allowing for more accurate predictions with OET Bulletin No. 69. But the Commission continues to allow the previous method in order to avoid imposing any additional burden on stations that were previously authorized using the previous mechanical beam tilt method.

Section 73.625(c)(3)(v) currently requires that horizontal plane patterns be plotted ''to the largest scale possible on unglazed letter-size polar coordinate paper.'' This requirement is outdated and not consistent with current licensee and Commission staff practices. This NPRM proposes to instead require licensees to submit patterns in the form of a .pdf attachment to an application filed in LMS, and propose to clarify that similar plots are required for elevation or matrix patterns submitted in the LMS form. This approach would provide flexibility to applicants and conform to modern practices.

With the elimination of analog service, there are no full power television stations operating pursuant to the subscription television (''STV'') rules, which allowed analog stations to offer a subscription television service ''for a fee or charge'' given that there are no full power television stations operating pursuant to the STV rules and digital television stations are permitted to provide STV-type services on an ancillary or supplementary basis to their primary digital television service, and LMS does not permit the filing of applications or requests to operate in an STV mode. Accordingly, §§ 73.641 through 73.644, 73.4247, 73.6026, and 74.732(e) are obsolete and we propose to eliminate them.

In 2000, the Commission adopted a needs based test in § 73.622(a) for future rulemakings allowing noncommercial educational (NCE) entities to request that ''non-reserved channels not already in the Table of Allotments be added and reserved for NCE use.'' This NPRM proposes to amend § 73.622(a) to remove this language as Commission staff does not believe it serves a practical purpose in the current environment. Commission staff does not intend, however, to eliminate the ability of an NCE entity to reserve one of the few vacant television channels currently in the Table of TV Allotments. An NCE entity may still file a rulemaking petition to request that the Commission reserve the channel for noncommercial educational use, without being required to rely on the special process enumerated in § 73.622(a).

Section 73.3543 provides that no new special service authorizations may be issued after 1958, however, renewals or modifications will be considered in certain circumstances. The Commission staff is unaware of any such authorizations today, and the Commission tentatively concludes the rule is obsolete and can be deleted. This NPRM proposes to delete the rule and seeks comment on this proposal.

Section 0.434 refers to the Broadcast Application Processing System (BAPS), which is a legacy database system that has not been in use at the Commission for many years. The NPRM proposes to update the rule to reflect the current application television filing and processing databases and methods for viewing the databases.

In January 2021, the Commission adopted updated rules in § 73.626 relating to Distributed Transmission Systems (''DTS''). Since that time, questions have arisen about how the rules are to be applied. To make the intent and application of the rule less ambiguous, this NPRM proposes to modify language in 73.626(b) and (f)(2) to define certain terms and make clarifications that will better reflect the method described in the *2021 DTS Order* and used in processing such applications.

All full-power and Class A TV stations are assigned a transport stream ID (''TSID''), which is required to be transmitted in order to provide the Program and System Information Protocol (''PSIP'') data required by § 73.682(d). Consistent with that rule, this NPRM proposes to clarify that all such stations must broadcast with their assigned TSID during their hours of operation. For the same reason, the NPRM proposes the same requirement with respect to a station's bit stream ID (''BSID''), which has the same function as the TSID, but in the ATSC 3.0 context.

The Commission's rules require coordination of applications in border regions with the neighboring countries' appropriate regulatory officials. Under the *Exchange of Coordination Letters with IFT Regarding DTV Transition and Reconfiguration of 600 MHz Spectrum,* signed between the FCC and Mexico's Instituto Federal de Telecomunicaciones (''IFT'') in July 2015, Class A stations approved by Mexico are grouped with full-service stations. It is the Media Bureau staff's experience that IFT routinely requests that applications submitted for coordination of Class A stations specify a full-service emission mask, and if such applications do not initially specify the full-service emission mask, IFT asks for it to be included in an amendment. This two-step process increases the processing burdens on the FCC, IFT, and stations, and results in delays in granting applications. Therefore, this NPRM proposes to amend § 73.6024(d)

to require Class A stations within 275 kilometers of the US-Mexico border to specify a full-service emission mask in any modification application.

This NPRM proposes to delete language in § 73.6025(a) that is almost identical to that in § 73.625(c)(3). These rule sections provide similar requirements regarding how applicants should describe and document antenna patterns submitted in their applications. This NPRM proposes to cross-reference § 73.625(c)(3) in § 73.6025(a), eliminating the duplication but making clear that the requirements in § 73.625(c)(3) continue to apply to Class A television stations. We seek comment on this proposal.

Section 73.6026 lists § 73.624 as a rule applicable to Class A stations. It also includes a note stating that ''Section 73.624(b) will apply only to the extent that such stations must also transmit at least one over-the-air video program signal at no direct charge to viewers of the digital Class A station.'' Such language is also included in § 73.624(b) and so this NPRM proposes to remove that text in § 73.6026 as duplicative. This NPRM also proposes to clarify that this change would mandate the use of a minimum 480i video resolution by Class A stations, consistent with our proposal with respect to full power and LPTV/translator stations in our earlier adopted *Part 74 NPRM,* FCC 22–58, (rel. July 13, 2022).

Legal Basis

The proposed action is authorized under sections 1, 4, 301, 303, 307, 308, 309, 310, 316, 319, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, 336.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act (SBA). A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

Below, we provide a description of the impacted small entities, as well as an estimate of the number of such small entities, where feasible.

Television Broadcasting. This industry is comprised of ''establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having $41.5 million or less in annual receipts as small. The 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year. Of that number, 657 firms had revenue of less than $25,000,000. Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

The Commission estimates that as of June 2022, there were 1,372 licensed commercial television stations. Of this total, 1,280 stations (or 93.2%) had revenues of $41.5 million or less in 2021, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on June 1, 2022, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of June 2022, there were 384 licensed noncommercial educational (NCE) television stations, 383 Class A TV stations, 1,865 LPTV stations and 3,224 TV translator stations. The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

Radio Stations. This industry is comprised of ''establishments primarily engaged in broadcasting aural programs by radio to the public.'' Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies firms having $41.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year. Of this number, 1,879 firms operated with revenue of less than $25 million per year. Based on this data and the SBA's small business size standard, we estimate a majority of such entities are small entities.

The Commission estimates that as of June 30, 2022, there were 4,498 licensed commercial AM radio stations and 6,689 licensed commercial FM radio stations, for a combined total of 11,187 commercial radio stations. Of this total, 11,185 stations (or 99.98%) had revenues of $41.5 million or less in 2021, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on June 1, 2022, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of June 30, 2022, there were 4,184 licensed noncommercial (NCE) FM radio stations, 2,034 low power FM (LPFM) stations, and 8,951 FM translators and boosters. The Commission however does not compile, and otherwise does not have access to financial information for these radio stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of radio station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of ''small business'' is that the entity must be

independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The NPRM proposes modified reporting requirements. The Commission seeks comment on whether television stations should be able to now make certain required notifications through filings procedures in LMS as opposed to by letter, as has been the case. Similarly, the Commission seeks comment on its proposals to update Commission rules to reference the current designation for form numbers, require electronic filing in LMS, and remove obsolete forms. Should the Commission ultimately decide to adopt these requirements, they would result in a modified paperwork obligation. The Commission anticipates that this option will lessen the physical burden on small entities. The Commission will have to consider the benefits and costs of allowing television stations to submit certain notifications in LMS. If adopted, the Commission will seek approval and the corresponding burdens to account for this modified reporting requirement. We expect the comments we receive from the parties in the proceeding, including cost and benefit analyses, will help the Commission to identify and evaluate compliance costs and burdens for small businesses that may result from the matters discussed in the NPRM.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives, specifically small business, that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities. *See* 5 U.S.C. 603(c)(1)–(4).

This NPRM seeks comment on a number of proposals that would codify Commission staff's current practices or better reflect technological advancements in the industry. The Commission does not have supporting data at this time to determine if there will or will not be an economic impact on small businesses as a result of the proposed rule amendments and/or deletions. However, the Commission anticipates that the proposed rule updates and reorganization generally will lessen the burdens on small entities. For example, § 73.625(b)(5) specifies a number of paper maps which should be used to prepare the profile graphs described in paragraph (b)(4), and to determine the location and height above sea level of the antenna height. Commission staff believes that multiple references to various sources of paper maps contained in the rule are outdated methods to make these types of calculations. This NPRM therefore proposes to remove those references to outmoded paper maps and replace them with a reference to the National Elevation Dataset and other similar bald earth terrain datasets which are used by modern automated software currently used by the Commission and industry. Moreover, § 73.625(b)(4) describes how to plot certain radials on a graph and provides a range of options for the number of points of elevation to use in each radial. This NPRM proposes to conform the requirement to reference the TVStudy software currently used for preparing and processing applications, and specify the use of 10 points per kilometer in all circumstances consistent with present practice found in the TVStudy software used by the Commission and licensees to process and prepare applications. These proposals are an attempt to simplify, streamline, and modernize existing rules and procedures that will enable television stations to more easily comply with licensing requirements through familiar and low cost measures.

In addition, this NPRM seeks to avoid imposing additional burdens on television stations where practicable. For example, this NPRM proposes to update § 73.625(c)(3)(ii) to reflect that the LMS filing system permits an alternate method of specifying mechanically beam tilted facilities. The proposed rule indicates the alternate method is preferable because it provides a three-dimensional representation of the antenna, allowing for more accurate predictions with OET Bulletin No. 69. But Commission staff continues to allow the previous method in order to avoid imposing any additional burden on stations that were previously authorized using the previous mechanical beam tilt method.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

None.

Report to Congress

The Commission will send a copy of this NPRM including the IRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the NPRM including the IRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this NPRM and IRFA (or summaries thereof) will also be published in the **Federal Register**.

List of Subjects

47 CFR Parts 0

Authority delegations (Government agencies), Organization and functions (Government agencies)

47 CFR Part 27

Communications common carriers.

47 CFR Part 73

Full power TV, Class A TV, Incorporated by reference.

47 CFR Part 74

Low power TV, TV translator stations.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Regulations

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 0, 27, 73, and 74 to read as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 409, unless otherwise noted.

■ 2. Revise § 0.434 to read as follows:

§ 0.434 Data bases and lists of authorized broadcast stations and pending broadcast applications.

The FCC makes available its data bases, Consolidated Database System (CDBS) and Licensing and Management System (LMS), containing information about authorized broadcast stations, pending applications for such stations, and rulemaking proceedings involving amendments to the TV and FM Table of Allotments. CDBS and LMS contain frequencies, station locations, and other

particulars. CDBS and LMS may be viewed at the Commission's website at *www.fcc.gov* under Media Bureau.

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICE

■ 3. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

§ 27.60 [Removed and Reserved]

■ 4. Remove and reserve § 27.60.

§ 27.1310 [Removed and Reserved]

■ 5. Remove and reserve § 27.1310.

PART 73—RADIO BROADCAST SERVICES

■ 6. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 7. Section 73.611 is added to read as follows:

§ 73.611 Emission levels and mask filter.

(a) The power level of emissions on frequencies outside the authorized channel of operation must be attenuated no less than the following amounts below the average transmitted power within the authorized channel. In the first 500 kHz from the channel edge the emissions must be attenuated no less than 47 dB. More than 6 MHz from the channel edge, emissions must be attenuated no less than 110 dB. At any frequency between 0.5 and 6 MHz from the channel edge, emissions must be attenuated no less than the value determined by the following formula:

Formula 1 to paragraph (a)

Attenuation in dB = $-11.5(\Delta f + 3.6)$;

Where:

Δf = frequency difference in MHz from the edge of the channel.

(b) This attenuation is based on a measurement bandwidth of 500 kHz. Other measurement bandwidths may be used as long as appropriate correction factors are applied. Measurements need not be made any closer to the band edge than one half of the resolution bandwidth of the measuring instrument. Emissions include sidebands, spurious emissions and radio frequency harmonics. Attenuation is to be measured at the output terminals of the transmitter (including any filters that may be employed). In the event of interference caused to any service, greater attenuation may be required.

■ 8. Section 73.612 is revised to read as follows:

§ 73.612 Protection from interference.

(a) Permittees and licensees of TV broadcast stations are not protected from any interference which may be caused by the grant of a new station or of authority to modify the facilities of an existing station in accordance with the provisions of this subpart. The nature and extent of the protection from interference accorded to TV broadcast stations is limited solely to the protection which results from the interference protection requirements set forth in this subpart.

(b) [Reserved]

§ 73.613 [Removed and Reserved]

■ 9. Remove and reserve § 73.613.

■ 10. Amend § 73.614 by:

■ a. Revising paragraphs (a), (b) introductory text, (b)(1) through (3);

■ b. Removing and reserving paragraphs (b)(4) and (5);

■ c. Revising paragraph (b)(6); and

■ d. Removing paragraph (b)(7).

The revisions read as follows:

§ 73.614 Power and antenna height requirements.

(a) *Minimum requirements.* Applications will not be accepted for filing if they specify less than 100 watts horizontally polarized visual effective radiated power (ERP) in any horizontal direction. No minimum antenna height above average terrain (HAAT) is specified. For stations requesting DTS operation pursuant to § 73.626, this requirement applies to at least one site in the DTS.

(b) *Maximum power.* Applications for new full power television stations, for changes in authorized full power television stations, and petitions for changes to the Table of TV Allotments, will not be accepted for filing if they specify a power which exceeds the maximum permitted boundaries specified in the following formulas:

(1) A TV station that operates on a channel 2–6 allotment will be allowed a maximum ERP of 10 kW if its antenna HAAT is at or below 305 meters and it is located in Zone I or a maximum ERP of 45 kW if its antenna HAAT is at or below 305 meters and it is located in Zone II or Zone III.

(i) At higher HAAT levels, such TV stations will be allowed to operate with lower maximum ERP levels in accordance with the following table and formulas (the allowable maximum ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table):

TABLE 1 TO PARAGRAPH (b)(1)(i)—MAXIMUM ALLOWABLE ERP AND ANTENNA HEIGHT FOR TV STATIONS IN ZONES II OR III ON CHANNELS 2–6

Antenna HAAT (meters)	ERP (kW)
610	10
580	11
550	12
520	14
490	16
460	19
425	22
395	26
365	31
335	37
305	45

(ii) For TV stations located in Zone I that operate on channels 2–6 with an HAAT that exceeds 305 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max} = 92.57 - 33.24 * \log_{10}(HAAT)$

(iii) For TV stations located in Zone II or III that operate on channels 2–6 with an HAAT that exceeds 610 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max} = 57.57 - 17.08 * \log_{10}(HAAT)$

(2) A TV station that operates on a channel 7–13 allotment will be allowed a maximum ERP of 30 kW if its antenna HAAT is at or below 305 meters and it is located in Zone I or a maximum ERP of 160 kW if its antenna HAAT is at or below 305 meters and it is located in Zone II or Zone III.

(i) At higher HAAT levels, such TV stations will be allowed to operate with lower maximum ERP levels in accordance with the following table and formulas (the allowable maximum ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table):

TABLE 2 TO PARAGRAPH (b)(2)(i)—MAXIMUM ALLOWABLE ERP AND ANTENNA HEIGHT FOR TV STATIONS IN ZONES II OR III ON CHANNELS 7–13

Antenna HAAT (meters)	ERP (kW)
610	30
580	34
550	40
520	47
490	54
460	64
425	76
395	92

TABLE 2 TO PARAGRAPH (b)(2)(i)—MAXIMUM ALLOWABLE ERP AND ANTENNA HEIGHT FOR TV STATIONS IN ZONES II OR III ON CHANNELS 7–13—Continued

Antenna HAAT (meters)	ERP (kW)
365	110
335	132
305	160

(ii) For TV stations located in Zone I that operate on channels 7–13 with an HAAT that exceeds 305 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max} = 97.35–33.24 * \log_{10}(HAAT)$

(iii) For TV stations located in Zone II or III that operate on channels 7–13 with an HAAT that exceeds 610 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max} = 62.34–17.08 * \log_{10}(HAAT)$

(3) A TV station that operates on a channel 14–36 allotment will be allowed a maximum ERP of 1,000 kW if its antenna HAAT is at or below 365 meters.

(i) At higher HAAT levels, such TV stations will be allowed to operates with lower maximum ERP levels in accordance with the following table and formulas (the allowable maximum ERP for intermediate values of HAAT is determined using linear interpolation based on the units employed in the table):

TABLE 3 TO PARAGRAPH (b)(3)(i)—MAXIMUM ALLOWABLE ERP AND ANTENNA HEIGHT FOR TV STATIONS ON CHANNELS 14–36, ALL ZONES

Antenna HAAT (meters)	ERP (kW)
610	316
580	350
550	400
520	460
490	540
460	630
425	750
395	900
365	1,000

(ii) For TV stations located in Zone I, II or III that operate on channels 14–36 with an HAAT that exceeds 610 meters, the allowable maximum ERP expressed in decibels above 1 kW (dBk) is determined using the following formula, with HAAT expressed in meters:

$ERP_{max} = 72.57–17.08 * \log_{10}(HAAT)$

Where:

ERP_{Max} = Maximum Effective Radiated Power measured in decibels above 1 kW (dBk).
HAAT = Height Above Average Terrain measured in meters.

(4) [Reserved]

(5) [Reserved]

(6) The effective radiated power in any horizontal or vertical direction may not exceed the maximum values permitted by this section, except that licensees and permittees may request an increase in either ERP in some azimuthal direction or antenna HAAT, or both, up to the maximum permissible limits on TV power set forth in paragraph (b)(1), (2), or (3) of this section, as appropriate, up to that needed to provide the same geographic coverage area as the largest station within their market. Such requests must be accompanied by a technical showing that the increase complies with the technical criteria in § 73.620, and thereby will not result in new interference exceeding the *de minimis* standard set forth in that section, or statements agreeing to the change from any co-channel or adjacent channel stations that might be affected by potential new interference, in accordance with § 73.620(e). For the purposes of this paragraph:

(i) The maximum ERP value shall not exceed the maximum permitted at any height within the relevant zone consistent with the values permitted in paragraph (b)(1), (2), or (3) of this section. The associated maximum height for that given ERP may be exceeded.

(ii) Stations in the same Nielsen DMA are considered to be in the same market.

(iii) ''Geographic coverage area'' is defined as the number of square kilometers found within a station's F(50,90) contour as calculated in § 73.619. A station taking advantage of this provision need not specify coverage that is congruent with or encompassed by the largest station in the market.

* * * * *

§ 73.615 [Removed and Reserved]

■ 11. Remove and reserve § 73.615.

■ 12. Section 73.616 is amended by:

■ a. Revising the section heading;

■ b. Removing and reserving paragraphs (a), (b), and (c), and the introductory text to paragraph (d);

■ c. Revising the introductory text to paragraph (d)(1); and

■ d. Removing and reserving paragraphs (d)(2), (e) and (g).

The revisions read as follows:

§ 73.616 References to TV station interference protection methodology.

* * * * *

(d) [Reserved]

(1) For evaluating compliance with the requirements of this paragraph, interference to populations served is to be predicted based on the most recent official decennial U.S. Census population data as identified by the Media Bureau in a Public Notice issued not less than 60 days prior to use of the data for a specific year in application processing and otherwise according to the procedure set forth in OET Bulletin No. 69: ''Longley-Rice Methodology for Evaluating TV Coverage and Interference'' (February 6, 2004) (incorporated by reference, see § 73.8000), including population served within service areas determined in accordance with § 73.619, consideration of whether F(50,10) undesired signals will exceed the following desired-to-undesired (D/U) signal ratios, assumed use of a directional receiving antenna, and use of the terrain dependent Longley-Rice point-to-point propagation model. Applicants may request the use of a cell size other than the default of 2.0 km per side, but only requests for cell sizes of 1.0 km per side or 0.5 km per side will be considered. The threshold levels at which interference is considered to occur are:

* * * * *

■ 13. Section 73.617 is added to read as follows:

§ 73.617 Interference protection of other services.

(a) *Protection of land mobile operations on channels 14–20.* The Commission will not accept petitions to amend the Table of TV Allotments, applications for new TV stations, or applications to change the channel or location of authorized TV stations that would use channels 14–20 where the distance between the TV reference coordinates as defined in § 73.622(d), would be located less than 250 km from the city center of a co-channel land mobile operation or 176 km from the city center of an adjacent channel land mobile operation. Such filings that do not meet the minimum TV-to-land mobile spacing standards will, however, be considered where all affected land mobile licensees consent to the requested action. Land mobile operations are authorized on these channels in the following markets:

TABLE 1 TO PARAGRAPH (a)—LAND MOBILE OPERATIONS TO BE PROTECTED

City	Channels	Latitude	Longitude
Boston, MA	14, 16	42°21′24.4″	71°03′23.2″
Chicago, IL	14, 15	41°52′28.1″	87°38′22.2″
Cleveland, OH	14, 15	41°29′51.2″	81°49′49.5″
Dallas, TX	16	32°47′09.5″	96°47′38.0″
Detroit, MI	15, 16	42°19′48.1″	83°02′56.7″
Houston, TX	17	29°45′26.8″	95°21′37.8″
Los Angeles, CA	14, 16, 20	34°03′15.0″	118°14′31.3″
Miami, FL	14	25°46′38.4″	80°11′31.2″
New York, NY	14, 15, 16	40°45′06.4″	73°59′37.5″
Philadelphia, PA	19, 20	39°56′58.4″	75°09′19.6″
Pittsburgh, PA	14, 18	40°26′19.2″	79°59′59.2″
San Francisco, CA	16, 17	37°46′38.7″	122°24′43.9″
Washington, DC	17, 18	38°53′51.4″	77°00′31.9″

Note 1 to paragraph (a). The Chief, Public Safety and Homeland Security Bureau, waived the rules to allow channel 15 to be used for land mobile operation in Los Angeles County, CA (DA 08–2823; adopted December 30, 2008). Notwithstanding the channels listed in paragraph (a) of this section, the waiver requires television stations to protect this land mobile operation.

(b) *Protection of land mobile operations below channel 14.* (1) TV broadcast stations operating on Channel 14 must take special precautions to avoid interference to adjacent spectrum land mobile radio service facilities. Where a TV station is authorized and operating prior to the authorization and operation of the land mobile facility, a Channel 14 station must attenuate its emissions within the frequency range 467 to 470 MHz if necessary to permit reasonable use of the adjacent frequencies by land mobile licensees.

(2) The requirements listed below apply to permittees authorized to construct a new station on TV Channel 14, and to licensees authorized to change the channel of an existing station to Channel 14, to increase effective radiated power (ERP) (including any change in directional antenna characteristics that results in an increase in ERP in any direction), or to change the transmitting location of an existing station.

(i) For the purposes of this paragraph (b), a protected land mobile facility is a receiver that is intended to receive transmissions from licensed land mobile stations within the frequency band below 470 MHz, and is associated with one or more land mobile stations for which a license has been issued by the Commission, or a proper application has been received by the Commission prior to the date of the filing of the TV construction permit application. However, a land mobile facility will not be protected if it is proposed in an application that is denied or dismissed and that action is no longer subject to Commission review. Further, if the land mobile station is not operating when the TV facility commences operation and it does not commence operation within the time permitted by its authorization in accordance with part 90 of this chapter, it will not be protected.

(ii) A TV permittee must take steps before construction to identify potential interference to normal land mobile operation that could be caused by TV emissions outside the authorized channel, land mobile receiver desensitization or intermodulation. It must install filters and take other precautions as necessary, and submit evidence that no interference is being caused before it will be permitted to transmit programming on the new facilities pursuant to the provisions of § 73.1615 or § 73.1620 of this part. A TV permittee must reduce its emissions within the land mobile channel of a protected land mobile facility that is receiving interference caused by the TV emission producing a vertically polarized signal and a field strength in excess of 17 dBu at the land mobile receiver site on the land mobile frequency. The TV emission should be measured with equipment set to a 30 kHz measurement bandwidth including the entire applicable land mobile channel. A TV permittee must correct a desensitization problem if its occurrence can be directly linked to the start of the TV operation and the land mobile station is using facilities with typical desensitization rejection characteristics. A TV permittee must identify the source of an intermodulation product that is generated when the TV operation commences. If the intermodulation source is under its control, the TV permittee must correct the problem. If the intermodulation source is beyond the TV permittee's control, it must cooperate in the resolution of the problem and should provide whatever technical assistance it can.

(c) *Channel 6 Protection of FM radio stations.* Parties requesting new allotments on channel 6 be added to the Table of TV Allotments must submit an engineering study demonstrating that no interference would be caused to existing FM radio stations on FM channels 200–220.

(d) *Blanketing interference.* Present information is not sufficiently complete to establish blanketing interference areas for television broadcast stations. Blanketing interference is interference in an area adjacent to a transmitter in which the reception of other stations is subject to interference due to the strong signal from this station. The authorization of station construction in areas where blanketing interference is found to be excessive will be on the basis that the applicant will assume full responsibility for the adjustment of reasonable complaints arising from excessively strong signals of the applicant's station or take other corrective action.

(e) *Medical telemetry device notification condition.* Stations should be aware that a condition is placed on all TV broadcast station authorizations that result in a change in coverage area, or all authorizations for new stations, which requires TV broadcasters to identify and notify hospital and other health care facilities within the station's coverage area to avoid interference to medical telemetry devices.

■ 14. Section 73.618 is added to read as follows:

§ 73.618 Antenna location and principal community coverage.

(a) The TV antenna location shall be chosen so that, on the basis of the effective radiated power (ERP) and antenna height above average terrain (HAAT) employed, the following minimum F(50,90) field strength in dB above one uV/m will be provided over

the entire principal community to be served:

TABLE 1 TO PARAGRAPH (a)—MINIMUM FIELD STRENGTH REQUIRED OVER PRINCIPAL COMMUNITY

	dBu
Channels 2–6	35
Channels 7–13	43
Channels 14–36	48

(b) The location of the antenna must be so chosen that there is not a major obstruction in the path over the principal community to be served.

(c) For the purposes of this section, coverage is to be determined in accordance with § 73.619(b). Under actual conditions, the true coverage may vary from these estimates because the terrain over any specific path is expected to be different from the average terrain on which the field strength charts were based. Further, the actual extent of service will usually be less than indicated by these estimates due to interference from other stations. Because of these factors, the predicted field strength contours give no assurance of service to any specific percentage of receiver locations within the distances indicated.

■ 15. Section 73.619 is added to read as follows:

§ 73.619 Contours and service areas.

(a) *Purposes of the field strength contours.* The field strength contours will be considered for the following purposes only:

(1) In the estimation of coverage resulting from the selection of a particular transmitting antenna site by an applicant for a TV station.

(2) In connection with problems of coverage arising out of application of § 73.3555.

(3) In determining compliance with § 73.618(a) concerning the minimum field strength to be provided over the principal community to be served.

(b) *Determining coverage.* (1) In predicting the distance to the field strength contours, the F (50,50) field strength charts (Figures 9, 10 and 10b of § 73.699 of this part) and the F (50,10) field strength charts (Figures 9a, 10a and 10c of § 73.699 of this part) shall be used. To use the charts to predict the distance to a given F (50,90) contour, the following procedure is used: Convert the effective radiated power in kilowatts for the appropriate azimuth into decibel value referenced to 1 kW (dBk). Subtract the power value in dBk from the contour value in dBu. Note that for power less than 1 kW, the difference value will be greater than the contour value because the power in dBk is negative. Locate the difference value obtained on the vertical scale at the left edge of the appropriate F (50,50) chart for the TV station's channel. Follow the horizontal line for that value into the chart to the point of intersection with the vertical line above the height of the antenna above average terrain for the appropriate azimuth located on the scale at the bottom of the chart. If the point of intersection does not fall exactly on a distance curve, interpolate between the distance curves below and above the intersection point. The distance values for the curves are located along the right edge of the chart. Using the appropriate F (50,10) chart for the DTV station's channel, locate the point where the distance coincides with the vertical line above the height of the antenna above average terrain for the appropriate azimuth located on the scale at the bottom of the chart. Follow a horizontal line from that point to the left edge of the chart to determine the F (50,10) difference value. Add the power value in dBk to this difference value to determine the F (50,10) contour value in dBu. Subtract the F (50,50) contour value in dBu from this F (50,10) contour value in dBu. Subtract this difference from the F (50,50) contour value in dBu to determine the F (50,90) contour value in dBu at the pertinent distance along the pertinent radial.

(2)(i) The effective radiated power to be used is that radiated at the vertical angle corresponding to the depression angle between the transmitting antenna center of radiation and the radio horizon as determined individually for each azimuthal direction concerned. The depression angle is based on the difference in elevation of the antenna center of radiation above the average terrain and the radio horizon, assuming a smooth spherical earth with a radius of 8,495.5 kilometers (5,280 miles) and shall be determined by the following equation:

Equation 1 to paragraph (b)(2)(i)

$$A = 0.0277 \text{ square root of } H$$

Where:

A is the depression angle in degrees.

H is the height in meters of the transmitting antenna radiation center above average terrain of the 3.2–16.1 kilometers (2–10 miles) sector of the pertinent radial.

(ii) This equation is empirically derived for the limited purpose specified here of determining distance to filed strength contours for coverage. Its use for any other purpose may be inappropriate.

(3) Applicants for new TV stations or changes in the facilities of existing TV stations must submit to the FCC a showing as to the location of their stations' or proposed stations' contour. This showing is to include a map showing this contour, except where applicants have previously submitted material to the FCC containing such information and it is found upon careful examination that the contour locations indicated therein would not change, on any radial, when the locations are determined under this section. In the latter cases, a statement by a qualified engineer to this effect will satisfy this requirement and no contour maps need be submitted.

(4) The antenna height to be used with these charts is the height of the radiation center of the antenna above the average terrain along the radial in question. In determining the average elevation of the terrain, the elevations between 3.2–16.1 kilometers (2–10 miles) from the antenna site are employed. Path profiles shall be determined for 8 radials beginning at the antenna site and extending 16.1 kilometers (10 miles) therefrom. The radials should be determined for each 45 degrees of azimuth starting with True North. 10 points per kilometer of elevation (uniformly spaced) should be used for each radial. It is not necessary to take the curvature of the earth into consideration in this procedure, as this factor is taken care of in the charts showing signal strengths. The average elevation of the 12.9 kilometer (8 miles) distance between 3.2–16.1 kilometers (2–10 miles) from the antenna site should then be determined from the path profile for each radial. In directions where the terrain is such that negative antenna heights or heights below 30.5 meters (100 feet) for the 3.2 to 16.1 kilometers (2 to 10 mile) sector are obtained, an assumed height of 30.5 meters (100 feet) shall be used for the prediction of coverage. Actual calculated values should be used for computation of height above average terrain.

(5) In the preparation of the path profiles previously described, and in determining the location and height above sea level of the antenna site, the elevation or contour intervals shall be taken from a high quality bald earth terrain map or dataset such as the United States Geological Survey Topographic Quadrangle Maps or the National Elevation Dataset. If a dataset is used, the data must be processed for intermediate points along each radial using linear interpolation techniques.

(6) It is anticipated that many of these calculations may be done using computer software and with computerized datasets. If software or

datasets besides those officially adopted by the FCC are utilized, the alternate software or data must be identified.

(c) *TV Service Areas.* (1) The service area of a TV station is the geographic area within the station's noise-limited F(50,90) contour where its signal strength is predicted to exceed the noise-limited service level. The noise-limited contour is the area in which the predicted F(50,90) field strength of the station's signal, in dB above 1 microvolt per meter (dBu) as determined using the method in § 73.619(b) exceeds the following levels (these are the levels at which reception of TV service is limited by noise):

TABLE 1 TO PARAGRAPH (C)(1)—NOISE LIMITED SERVICE LEVELS

	dBu
Channels 2–6	28
Channels 7–13	36
Channels 14–36	41

(2) Within this contour, service is considered available at locations where the station's signal strength, as predicted using the terrain dependent Longley-Rice point-to-point propagation model, exceeds the levels above. Guidance for evaluating coverage areas using the Longley-Rice methodology is provided in *OET Bulletin No. 69.* For availability of OET Bulletin No. 69 (which is incorporated by reference elsewhere in this part), contact FCC (see § 73.8000 for contact information).

(d) *Protected facilities of an allotment.* The protected facilities of a TV allotment shall be the facilities (effective radiated power, antenna height and antenna directional radiation pattern, if any) authorized by a construction permit or license, or, where such an authorization is not available for establishing reference facilities, the facilities designated in the FCC order creating or modifying the Table of TV Allotments.

■ 16. Section 73.620 is added to read as follows:

§ 73.620 Interference calculation and protection of TV broadcast services.

(a) Due to the frequency spacing that exists between Channels 4 and 5, between Channels 6 and 7, and between Channels 13 and 14, the minimum adjacent channel technical criteria specified in this section shall not be applicable to these pairs of channels (see § 73.603(a)).

(b) Interference is to be predicted based on the procedures found in § 73.616(d)(1). (c) An application will not be accepted if it is predicted to cause interference to more than an additional 0.5 percent of the population served by another TV station. For this purpose, the population served by the station receiving additional interference does not include portions of the population within the noise-limited service contour of that station that are predicted to receive interference from the TV allotment facilities of the applicant or portions of that population receiving masking interference from any other station.

(d) A petition to add a new channel to the TV Table or any application to modify an existing TV station or allotment will not be accepted if it is predicted to cause more than 0.5 percent new interference, consistent with paragraphs (a) and (b) of this section, to a Class A TV station authorized pursuant to subpart J of this part, within the protected contour defined in § 73.6010.

(e) Negotiated agreements on interference. TV stations may operate with increased effective radiated power (ERP) and/or antenna height above average terrain (HAAT) that would result in more than 0.5 percent additional interference to another TV station if that station agrees, in writing, to accept the additional interference. Such agreements must be submitted with the application for authority to construct or modify the affected TV station. Negotiated agreements under this paragraph can include the exchange of money or other considerations from one station to another, including payments to and from noncommercial television stations assigned to reserved channels. Applications submitted pursuant to the provisions of this paragraph will be granted only if the Commission finds that such action is consistent with the public interest.

(f) The interference protection requirements contained in this section apply to television station operations under both the TV transmission standard in § 73.682(d) and the Next Gen TV transmission standard in § 73.682(f).

■ 17. Section 73.621 is amended by removing and reserving paragraphs (g) and (h) and revising paragraph (j).

§ 73.621 Noncommercial educational TV stations.

* * * * *

(j) The requirements of this section apply to the entire digital bitstream of noncommercial educational television stations, including the provision of ancillary or supplementary services.

■ 18. Revise § 73.622 to read as follows:

§ 73.622 Table of TV allotments.

(a) *General.* The following table of TV allotments contains the television channel allotments designated for the listed communities in the United States, its Territories, and possessions. Requests for addition of new TV allotments, or requests to change the channels allotted to a community, must be made in a petition for rule making to amend the Table of TV Allotments. A request to amend the Table of TV Allotments to add an allotment or change the channel of an allotment in the Table will be evaluated for technical acceptability using engineering criteria set forth in §§ 73.617, 73.618, and 73.620. A request to amend the TV table to add a new allotment will be evaluated for technical acceptability using the geographic spacing criteria set forth in § 73.622(k) and the engineering criteria set forth in §§ 73.614, 73.617, 73.618, and 73.620(a) and (d). TV allotments designated with an asterisk are assigned for use by non-commercial educational broadcast stations only. Rules governing noncommercial educational TV stations are contained in § 73.621.

(b)[Reserved]

(c) [Reserved]

(d) *Reference points and distance computations.*

(1) [Reserved]

(2) The reference coordinates of a TV allotment shall be the coordinates of the authorized facility. Where such a transmitter site is not available for use as reference coordinates, such as a new allotment, the coordinates shall be those designated in the FCC order modifying the Table of TV Allotments.

(e) [Reserved]

(f) [Reserved]

(g) [Reserved]

(h) [Reserved]

(i) [Reserved]

(j) *Table of TV Allotments.*

Community	Channel No.
Alabama:	
Anniston	9
Bessemer	14

Community	Channel No.
Birmingham	7, *10, 20, 29, 30
Demopolis	*19
Dothan	21, 36
Dozier	*10
Florence	2, *22
Gadsden	26
Gulf Shores	27
Homewood	21
Hoover	33
Huntsville	15, 17, 18, 19, *24
Louisville	*30
Mobile	9, 15, 18, 20, 23, *30
Montgomery	8, 22, *27, 28, 31
Mount Cheaha	*12
Opelika	17
Ozark	33
Selma	25, 34
Troy	19
Tuscaloosa	6, 36
Tuskegee	18
Vernon	*4
Alaska:	
Anchorage	7, *8, 10, 12, 20, *26, 28, 33
Bethel	*3
Fairbanks	7, *9, 18, 26
Juneau	*10, 11
Ketchikan	13
North Pole	20
Sitka	7
Arizona:	
Douglas	36
Flagstaff	13, 22, 32
Green Valley	34
Holbrook	*11
Kingman	19
Mesa	18
Phoenix	*8, 10, 15, 17, 20, 24, 26, 27, 29, 33
Prescott	7
Sierra Vista	21
Tolleson	31
Tucson	9, 16, 19, 23, 25, *28, *30, 32
Yuma	11, 13
Arkansas:	
Arkadelphia	*13
Camden	18
El Dorado	*10, 27
Eureka Springs	25
Fayetteville	*9, 15
Fort Smith	18, 21, 27
Harrison	31
Hot Springs	16
Jonesboro	18, *20, 27
Little Rock	*7, 12, 22, 28, 30, 32, *36
Mountain View	*13
Pine Bluff	24, 34
Rogers	33
Springdale	29
California:	
Anaheim	12
Arcata	22
Avalon	S
Bakersfield	10, 25, 26, 33
Bishop	20
Calipatria	36
Ceres	*15
Chico	20, 36
Clovis	27
Concord	S
Corona	25
Cotati	*5
El Centro	9, 22
Eureka	3, *11, 17, 28
Fort Bragg	* 4, 8
Fremont	S

Community	Channel No.
Fresno	7, 20, 30, *32, 34
Garden Grove	S
Hanford	21
Huntington Beach	*S
Inglewood	S
Long Beach	18
Los Angeles	4, 7, 9, 11, 13, *28, 31, 34, 35, 36, *S
Merced	11
Modesto	18
Monterey	32, S
Oakland	31
Ontario	29
Palm Springs	26, 28
Palo Alto	S
Paradise	30
Porterville	23
Rancho Palos Verdes	30
Redding	*9, 15
Riverside	S
Sacramento	*9, 10, 21, 22, 24, 35
Salinas	8, 11
San Bernardino	*5, 24
San Diego	8, 10, 17, 18, *19, 26
San Francisco	7, 12, 20, 28, 29, *30, 32, S, S, *S
San Jose	13, 19, 33, 36, *S
San Luis Obispo	15, 34
San Mateo	*27
Sanger	36
Santa Ana	33
Santa Barbara	21, 27
Santa Maria	19
Stockton	23, 25, 26
Twentynine Palms	23
Vallejo	34
Ventura	S
Visalia	*22, 28
Watsonville	*25
Colorado:	
Boulder	32
Broomfield	*13
Castle Rock	15
Colorado Springs	22, 24, 26
Denver	7, 9, 18, *20, 28, 31, *33, 34, 35, 36
Durango	15, *20, 33
Fort Collins	21
Glenwood Springs	23
Grand Junction	2, 7, 12, 15, *18
Greeley	17
Longmont	29
Montrose	13
Pueblo	*8, 25, 27
Steamboat Springs	10
Sterling	23
Connecticut:	
Bridgeport	S
Hartford	*30, 34, 36, S
New Britain	31
New Haven	10, S, *S
New London	28
Norwich	*9
Stamford	*21
Waterbury	33
Delaware:	
Dover	5
Seaford	*24
Wilmington	2, *13, 34
District of Columbia:	
Washington	7, 9, *31, *33, 34, 36, S, S
Florida:	
Boca Raton	*25
Boynton Beach	*S
Bradenton	29
Cape Coral	34
Clearwater	21

Community	Channel No.
Clermont	23
Cocoa	*30, 32
Daytona Beach	11, 15
Destin	29
Fort Lauderdale	30
Fort Myers	15, *22, 31
Fort Pierce	*18, 20
Fort Walton Beach	14, 21, 25
Gainesville	8, 16, *36
High Springs	29
Hollywood	24
Jacksonville	*9, 13, 14, 18, 19, 20, *21
Key West	3, 8
Lake Worth	36
Lakeland	18
Leesburg	7, *S
Live Oak	17
Marianna	26
Melbourne	14, 22
Miami	9, 10, 21, 22, 23, *26, 27, 28, *29, 31, 32
Naples	28, 32
New Smyrna Beach	*24
Ocala	31
Orange Park	10
Orlando	26, 27, 28, 33, *34, 35
Palm Beach	7
Panama City	9, 13, 16, *28
Panama City Beach	33
Pensacola	17, *24, 34, 35
Sarasota	24
St. Petersburg	10, 19, S
Stuart	34
Tallahassee	22, 24, 27, *32
Tampa	9, 12, *13, 17, 20, *S
Tequesta	16
Tice	33
Venice	25
West Palm Beach	12, 13, 35
Georgia:	
Albany	10, 29
Athens	*7, 18
Atlanta	10, 19, *21, 25, 27, 31, 32, *34, 36
Augusta	27, 28, 36
Bainbridge	19
Baxley	35
Brunswick	24
Chatsworth	*4
Cochran	*9
Columbus	*5, 11, 15, 24, 35
Cordele	34
Dalton	28
Dawson	*7
Macon	13, 26, 30, 33
Monroe	22
Pelham	*6
Perry	23
Rome	16
Savannah	*8, 16, 22, 23
Thomasville	20
Toccoa	24
Valdosta	31
Waycross	*7
Wrens	*6
Hawaii:	
Hilo	9, 11, 13, 22, 23
Honolulu	8, *11, *18, 19, 20, 22, 23, *26, 27, 31, 33, 35
Kailua	29
Kailua-Kona	25
Kaneohe	32
Wailuku	7, *10, 12, 16, 21, 24
Waimanalo	15
Idaho:	
Boise	7, 15, 20, *21
Caldwell	10

Community	Channel No.
Coeur d'Alene	*18
Filer	*18
Idaho Falls	8, 20, 36
Lewiston	32
Moscow	*12
Nampa	13, 24
Pocatello	*17, 23, 31
Sun Valley	5
Twin Falls	11, *22, 34
Illinois:	
Aurora	S
Bloomington	28
Carbondale	*8
Champaign	32, 34
Charleston	*30
Chicago	12, 19, 22, 23, 24, *25, 33, 34, S
Decatur	20, 22
East St. Louis	28
Freeport	9
Galesburg	8
Harrisburg	34
Jacksonville	*18
Joliet	35
Macomb	*36
Marion	30
Moline	*23, 31
Mount Vernon	13
Naperville	S
Olney	*23
Oswego	10
Peoria	24, 25, 26, *35
Quincy	22, 32, *34
Rock Island	4
Rockford	13, 16, 36
Springfield	11, 15, 16
Urbana	*9, 36
Indiana:	
Angola	12
Bloomington	27, 28, *33, S
Elkhart	30
Evansville	*9, 12, 22, 26, 28
Fort Wayne	*18, 20, 24, 32, 34
Gary	*17, S
Hammond	21
Indianapolis	7, 9, 13, *21, 22, *23, 25
Kokomo	15
Lafayette	11
Marion	S
Muncie	19
Richmond	S
Salem	16
South Bend	27, 29, *31, 36
Terre Haute	10, 18, 35
Vincennes	*31
Iowa:	
Ames	5, 23, *34
Burlington	21
Cedar Rapids	22, 27, 29, 32
Council Bluffs	*33
Davenport	17, 30, *34
Des Moines	8, *11, 13, 16, 19
Dubuque	14
Fort Dodge	*25
Iowa City	*12, 25
Mason City	*18, 24
Newton	36
Ottumwa	15
Red Oak	*35
Sioux City	9, 14, *28, 30, 32
Waterloo	7, *35
Kansas:	
Colby	17, *19
Derby	31
Dodge City	*21

Community	Channel No.
Ensign	6
Garden City	11, 13
Goodland	10
Great Bend	22
Hays	7, *16
Hoisington	14
Hutchinson	*8, 19, 35
Lakin	*8
Lawrence	25
Pittsburg	7, 13
Salina	17
Topeka	*11, 12, 13, 16, 27
Wichita	10, 15, 26, 28
Kentucky:	
Ashland	13, *36
Beattyville	7
Bowling Green	13, *18, 24, *29
Covington	*22
Danville	19
Elizabethtown	*23
Harlan	S
Hazard	20, *33
Lexington	21, 27, 28, *35
Louisville	8, 11, 14, *30, 32, *34, 36
Madisonville	*31
Morehead	*30
Murray	*17
Newport	15
Owensboro	17
Owenton	*24
Paducah	19, *23, 25
Pikeville	*23
Richmond	25
Somerset	*17
Louisiana:	
Alexandria	26, 31, *33, 35
Baton Rouge	9, 13, 24, *25, 34
Columbia	11
Hammond	35
Lafayette	10, 16, *23, 28
Lake Charles	7, 18, *20
Minden	32
Monroe	*13, 24
New Iberia	17
New Orleans	15, 19, 21, *23, 26, 27, *28, 29, 33
Shreveport	16, *17, 23, 28, 34
Slidell	17
West Monroe	19, 22
Maine:	
Augusta	*20
Bangor	2, 7, 13
Biddeford	*36
Calais	*10
Lewiston	24
Orono	*22
Poland Spring	8
Portland	15, 31, 34
Presque Isle	8, *10
Waterville	17
Maryland:	
Annapolis	*21
Baltimore	11, 12, *22, 25, 26, 27, S
Frederick	*28
Hagerstown	23, *29
Oakland	*26
Salisbury	*16, 29, 32
Silver Spring	S
Massachusetts:	
Boston	*5, 20, 21, 22, *32, 33, 34, 35
Cambridge	S
Foxborough	S
Lowell	*S
Marlborough	27
New Bedford	24, S

Community	Channel No.
Norwell	36
Pittsfield	7
Springfield	11, *13, 26
Woburn	S
Worcester	19
Michigan:	
Alpena	11, *24
Ann Arbor	24
Bad Axe	*15
Battle Creek	17, 21
Bay City	23, 30
Cadillac	9, 32, *34
Calumet	5
Cheboygan	16
Detroit	7, *20, 21, 25, 31, 32, 34
East Lansing	*33
Escanaba	32
Flint	12, 16
Grand Rapids	7, *11, 13, 19
Ishpeming	10
Kalamazoo	*5, 8, 22
Lansing	14, 28, S
Manistee	*20
Marquette	*8, 19, 35
Mount Clemens	27
Mount Pleasant	*26
Muskegon	24
Onondaga	10
Saginaw	18, 36
Sault Ste. Marie	8, 10
Traverse City	29, 35
Vanderbilt	21
Minnesota:	
Alexandria	7, 24
Appleton	*10
Austin	*20, 36
Bemidji	*9, 26
Brainerd	*28
Chisholm	11
Crookston	*16
Duluth	*8, 10, 18, 27, 33
Hibbing	13, *31
Mankato	12
Minneapolis	9, 22, 29, 30, 31, 32
Redwood Falls	27
Rochester	10, 26
St. Cloud	16
St. Paul	*23, *34, 35
Thief River Falls	10
Walker	12
Worthington	*15
Mississippi:	
Biloxi	*16, 32
Booneville	*9
Bude	*18
Columbus	27
Greenville	15
Greenwood	*25, 32
Gulfport	25
Hattiesburg	22
Holly Springs	26
Jackson	12, 14, *20, 21, 23, 30
Laurel	7
Magee	34
Meridian	13, 24, *28, 31
Mississippi State	*8
Natchez	15
Oxford	*36
Senatobia	*S
Tupelo	11, 17
Vicksburg	36
West Point	16
Missouri:	
Cape Girardeau	32, 36

Community	Channel No.
Columbia	17, 27
Hannibal	22
Jefferson City	20, 29
Joplin	17, 23, *35
Kansas City	*18, 24, 29, 30, 31, 32, 34, 36
Kirksville	33
Osage Beach	22
Poplar Bluff	15
Sedalia	15
Springfield	10, *16, 19, 28
St. Joseph	7, 21
St. Louis	14, *23, 24, 26, 31, 33, 35
Montana:	
Billings	11, *16, 18, 20
Bozeman	* 8, 27
Butte	15, 19, 20, 24
Glendive	5
Great Falls	8, 17, * 21, 22, 26
Hardin	22
Havre	9
Helena	29, 31
Kalispell	9, *15
Miles City	3
Missoula	7, *11, 20, 23
Nebraska:	
Alliance	*13
Bassett	*7
Grand Island	11
Hastings	5, *28
Hayes Center	6
Kearney	18
Lexington	*26
Lincoln	8, 10, *12, 15
McCook	12
Merriman	*12
Missoula	*11, 20, 23, 25
Norfolk	*19
North Platte	2, *9
Omaha	*17, 20, 22, 26, 29, 31
Scottsbluff	29
Sidney	7
York	24
Nevada:	
Elko	10
Ely	27
Henderson	24
Las Vegas	2, 7, *11, 13, 16, 22, 29
Laughlin	32
Paradise	20
Reno	8, 11, 12, *15, 20, 23, 26
Tonopah	9
Winnemucca	7
New Hampshire:	
Concord	23
Derry	S
Durham	*11
Keene	*18
Littleton	*23
Manchester	9
Merrimack	29
New Jersey:	
Atlantic City	4
Camden	*23
Jersey City	S
Linden	35
Middletown Township	3
Millville	S
Montclair	*S
Mount Laurel	S
New Brunswick	*8
Newark	12, 26
Newton	18
Paterson	S
Princeton	S

Community	Channel No.
Secaucus	25
Trenton	*S
Vineland	S
Wildwood	36
New Mexico:	
Albuquerque	7, 13, 16, *17, 22, 24, 26, *35, 36
Carlsbad	19, 25
Clovis	12
Farmington	12
Hobbs	29
Las Cruces	*23, 26
Portales	*32
Roswell	8, 10, 21, 27
Santa Fe	*8, 10, 27, 29
Silver City	10, 12
New York:	
Albany	8, 21, 24
Amsterdam	19
Batavia	24
Binghamton	7, 8, 27, *31
Buffalo	16, *31, 32, 33, 34, 36, S
Carthage	8
Corning	*25, 30
Elmira	23, 35
Garden City	*32
Ithaca	13
Jamestown	5
New Rochelle	S
New York	7, 11, *24, 27, 34, 36, S
Norwood	*23
Plattsburgh	14, *36
Riverhead	29
Rochester	9, 10, 21, *22, 28
Saranac Lake	34
Schenectady	22, *25, 35
Smithtown	23
Springville	7
Syracuse	14, 15, 17, 18, 19, *20, 36
Utica	29, 30, 34
Watertown	*26, 31
North Carolina:	
Archer Lodge	S
Asheville	13, *20, S
Belmont	25
Burlington	26
Chapel Hill	*20
Charlotte	*9, 18, 19, 23, 24
Concord	*21
Durham	9, 14
Edenton	*29
Fayetteville	22
Goldsboro	8
Greensboro	28, 35, S
Greenville	12, 19, *25, 36
Hickory	14
High Point	31
Jacksonville	16, *28
Kannapolis	32
Lexington	S
Linville	*36
Lumberton	*30
Manteo	13
New Bern	10
Raleigh	15, 17, 18
Roanoke Rapids	*27
Rocky Mount	32
Wake Forest	S
Washington	34
Wilmington	*21, 23, 24, 29
Winston-Salem	16, 29, *33
North Dakota:	
Bismarck	12, 17, *22, 26, 31
Devils Lake	8, *25
Dickinson	7, *9, 19

Community	Channel No.
Ellendale	*20
Fargo	*13, 19, 21, 36
Grand Forks	*15, 27
Jamestown	7
Minot	10, 13, 14, *15, 24
Pembina	12
Valley City	24
Williston	8, *11, 14
Ohio:	
Akron	17, 22, *24
Alliance	*29
Athens	*32
Bowling Green	*22
Cambridge	*6
Canton	S, S
Chillicothe	23
Cincinnati	12, *17, 18, 20, 26
Cleveland	8, 15, 19, *35, 36
Columbus	14, *16, 21, 27, 28
Dayton	31, 33, 34, *35, 36
Lima	4, 8
London	S
Lorain	S
Mansfield	12
Oxford	*29
Portsmouth	15
Sandusky	3
Shaker Heights	10
Springfield	S
Steubenville	9
Toledo	11, 13, 23, 26, *29, 35
Youngstown	31, 33, S
Zanesville	30
Oklahoma:	
Ada	17
Bartlesville	36
Cheyenne	*8
Claremore	*32
Eufaula	*31
Lawton	11
Muskogee	20
Norman	16
Oklahoma City	7, *13, 15, 18, 19, 23, 24, 25, 27, 33
Okmulgee	28
Shawnee	29
Tulsa	8, *11, 12, 14, 16, 22, 26, 34
Woodward	35
Oregon:	
Bend	*11, 18, 21
Coos Bay	11, 22
Corvallis	*7
Eugene	9, 17, 28, *29, 31
Grants Pass	30
Klamath Falls	13, 29, *33
La Grande	*13, 16
Medford	5, *8, 12, 16, 26
Pendleton	11
Portland	*10, 21, 24, 25, 26, 32
Roseburg	18, 19, 36
Salem	22, 33
Pennsylvania:	
Allentown	S, *S
Altoona	6, 24, 31
Bethlehem	9
Clearfield	*15
Erie	12, 21, 26, *27, 28
Greensburg	28
Harrisburg	10, 32, *36
Hazleton	22
Jeannette	11
Johnstown	8, 35
Lancaster	8, S
Philadelphia	6, 17, 28, 30, 31, 33, *S
Pittsburgh	*4, 16, 20, 21, 23, 25, 27

Community	Channel No.
Red Lion	S
Scranton	12, 21, 33, 34, *S
Wilkes-Barre	11
Williamsport	29
Willow Grove	S
York	S
Rhode Island:	
Newport	17
Providence	*2, 7, 12, 25
South Carolina:	
Allendale	*21
Anderson	35
Beaufort	*32
Charleston	17, 19, 20, *24, 25, 34
Columbia	7, 10, 15, 22, 25, *33
Conway	*28
Florence	13, *16, 26, 27
Greenville	2, *8, 17, 30
Greenwood	*26
Hardeeville	26
Myrtle Beach	32, 36
Rock Hill	34, S
Spartanburg	11, *S
Sumter	*29, 31
South Dakota:	
Aberdeen	9, *17
Brookings	*8
Eagle Butte	*13
Florence	3
Huron	12
Lead	5, 10
Lowry	*11
Martin	*8
Mitchell	26
Pierre	*10, 19
Rapid City	2, 7, 16, 21, *26
Reliance	13
Sioux Falls	7, 11, 13, 21, *24, 36
Vermillion	*34
Tennessee:	
Chattanooga	8, 9, 13, 14, *35
Cleveland	23
Cookeville	*22
Crossville	31
Franklin	32
Greeneville	28
Hendersonville	33
Jackson	21, 35
Jellico	18
Johnson City	9
Kingsport	32
Knoxville	7, 10, 15, 26, *29, 34
Lebanon	25
Lexington	*27
Memphis	13, 23, 25, 28, *29, 30, 31, 33
Murfreesboro	16
Nashville	*7, 10, 20, 21, 27, 30, 36
Sneedville	*24
Tazewell	36
Texas:	
Abilene	15, 29, 30
Alvin	36
Amarillo	*9, 10, 15, 19, 20
Arlington	25
Austin	7, 21, *22, 23, 33, 34
Baytown	31
Beaumont	12, 15, *29
Belton	17
Big Spring	33
Blanco	18
Borger	31
Bryan	24
College Station	16, 29
Conroe	*12

Community	Channel No.
Corpus Christi	8, 10, 19, *23, 26, 27
Dallas	8, *14, 21, 27, 32, 35, 36
Decatur	30
Del Rio	28
Denton	*29
Eagle Pass	18
El Paso	*13, 15, 16, 17, 18, 20, *21, 25
Farwell	18
Fort Worth	9, 18, 19, 24
Fredericksburg	8
Galveston	22, *23
Garland	33
Greenville	23
Harlingen	16, 18, *21
Houston	*8, 11, 13, 19, 21, *24, 26, 34, 35
Irving	34
Jacksonville	22
Katy	25
Kerrville	32
Killeen	13
Lake Dallas	31
Laredo	8, 19
Llano	27
Longview	20, S
Lubbock	16, *25, 27, 31, 35, 36
Lufkin	9
McAllen	17
Midland	18, 26
Nacogdoches	15
Odessa	7, 9, 15, 23, *28, 30
Port Arthur	27
Rio Grande	14
Rosenberg	30
San Angelo	11, 16, 19
San Antonio	*9, 12, 15, *16, 24, 28, 29, 30
Sherman	12
Snyder	17
Sweetwater	20
Temple	9
Texarkana	26
Tyler	7
Uvalde	26
Victoria	11, 20
Waco	10, *20, 26, 28
Weslaco	13
Wichita Falls	15, 22, 28
Wolfforth	23
Utah:	
Cedar City	14
Logan	12
Ogden	24, 35, *36
Price	11
Provo	*17, 29, 32
Richfield	*19
Salt Lake City	19, 20, 23, *27, 28, 30, 34
St. George	*18, 21
Vernal	16
Vermont:	
Burlington	7, 16, 20, *32
Montpelier	S
Rutland	*10
St. Johnsbury	*28
Windsor	*S
Virginia:	
Arlington	15
Ashland	8
Bristol	35
Charlottesville	2, *26, 32
Culpeper	*S
Danville	S
Grundy	14
Hampton	11
Hampton-Norfolk	*31
Harrisonburg	20

Community	Channel No.
Lynchburg	7, 21
Manassas	35
New Market	*S
Norfolk	16, 32, 33
Petersburg	28
Portsmouth	19, 20
Richmond	10, *22, 23, 24, *29
Roanoke	*3, 27, 30, 34, 36
Spotsylvania	*S
Staunton	*15
Virginia Beach	7, 21
Washington:	
Bellevue	24, 33
Bellingham	14, 19
Centralia	*19
Everett	31
Kennewick	27
Pasco	18
Pullman	*10, 24
Richland	*22, 26
Seattle	*9, 16, 23, 25, 30, 36
Spokane	*7, 13, 15, 20, 28, 34, 36
Tacoma	11, 13, 21, *27, *34
Vancouver	30
Walla Walla	9
Yakima	14, 16, *21, 33
West Virginia:	
Bluefield	17, 25
Charleston	18, 24, 29
Clarksburg	12, 13
Grandview	*8
Huntington	*9, 10, 22
Lewisburg	11
Martinsburg	13
Morgantown	*34
Oak Hill	31
Parkersburg	35
Weston	33
Wheeling	7
Wisconsin:	
Antigo	19
Appleton	36
Chippewa Falls	21
Crandon	13
Eagle River	26, 28
Eau Claire	17, 25
Fond du Lac	5
Green Bay	14, 18, 22, 23, *25
Janesville	21
Kenosha	30
La Crosse	8, *15, 28, 33
Madison	11, 18, 19, *20, 26
Mayville	34
Menomonie	*27
Milwaukee	*8, 27, 28, 29, 31, 32, S, *S
Park Falls	*36
Racine	S
Rhinelander	16
Superior	19
Suring	15
Wausau	7, 9, *24
Wittenberg	31
Wyoming:	
Casper	*8, 12, 14, 17, 20
Cheyenne	11, 27, 30
Jackson	11
Lander	7, *8
Laramie	*8
Rawlins	9
Riverton	10
Rock Springs	13
Sheridan	7, 13
Guam:	
Hagåtña	8, 12

Community	Channel No.
Tamuning	14
Puerto Rico:	
Aguada	25
Aguadilla	12, 17
Arecibo	35
Bayamón	S
Caguas	11, *24
Carolina	30
Fajardo	13, *15, 16
Guayama	34
Humacao	23
Mayagüez	20, 29, 31, 32
Naranjito	18
Ponce	7, 9, 14, *19, 36, S
San Juan	21, *26, 27, 28, S
San Sebastián	33
Toa Baja	*S
Yauco	S
U.S. Virgin Islands:	
Charlotte Amalie	17, 21, *36
Christiansted	20, 23

(k) *Minimum geographic spacing requirements for new TV allotments.* No petition to add a new channel to the Table of TV Allotments will be accepted unless it shows compliance with the requirements of this paragraph.

(1) Requests filed pursuant to this paragraph must demonstrate compliance with the principal community coverage requirements of § 73.618.

(2) Requests filed pursuant to this paragraph must meet the following requirements for geographic spacing with regard to all other TV stations and allotments:

(i) For VHF channels 2–13 in Zone I, co-channel allotments must be separated by 244.6 km, and no adjacent-channel allotments are permitted between 20 km and 110 km.

(ii) For UHF channels 14–36 in Zone I, co-channel allotments must be separated by 196.3 km, and no adjacent-channel allotments are permitted between 24 km and 110 km.

(iii) For VHF channels 2–13 in Zones II and III, co-channel allotments must be separated by 273.6 km, and no adjacent-channel allotments are permitted between 23 km and 110 km.

(iv) For UHF channels 14–36 in Zones II and III, co-channel allotments must be separated by 223.7 km, and no adjacent-channel allotments are permitted between 24 km and 110 km.

(3) Zones are defined in § 73.609. The minimum distance separation between a TV station in one zone and TV station in another zone shall be that of the zone requiring the lower separation.

(4) Due to the frequency spacing that exists between Channels 4 and 5, between Channels 6 and 7, and between Channels 13 and 14, the minimum geographic spacing requirements specified in paragraph (k)(2) of this section shall not be applicable to these pairs of channels (§ 73.603(a)).

■ 19. Revise § 73.623 to read as follows:

§ 73.623 TV application processing.

(a) *General.* Applications for new TV broadcast stations or for changes in authorized TV stations filed pursuant to this section will not be accepted for filing if they fail to comply with the requirements of this section and §§ 73.614, 73.617, 73.618, and 73.620.

(b) *Availability of channels.* Applications may be filed to construct TV broadcast stations only on the channels designated in the Table of TV Allotments set forth in § 73.622(j), and only in the communities listed therein. Applications that fail to comply with this requirement, whether or not accompanied by a petition to amend the TV Table, will not be accepted for filing.

(c) through (g) [Reserved]

(h) *TV application processing priorities.*

(1) [Reserved]

(2) TV applications for a construction permit or a modified construction permit:

(i) Shall be afforded the interference protection set forth in § 73.620:

(A) through (C) [Reserved]

(D) By later-filed TV applications; and

(E) By later-filed rulemaking petitions to amend the Table of TV Allotments;

(ii) Must demonstrate the requisite interference protection set forth in § 73.620 to:

(A) TV licensed stations;

(B) TV construction permits;

(C) Earlier-filed TV applications;

(D) Existing TV allotments;

(E) Rulemaking petitions to amend the Table of TV Allotments for which a Notice of Proposed Rule Making has been released and the comment deadline specified therein has passed prior to the filing date of the TV application;

(F) through (J) [Reserved]

(iii) That do not provide the requisite interference protection set forth § 73.620 to the following applications and petitions will be deemed mutually exclusive with those applications and petitions:

(A) Other TV applications filed the same day;

(B) Rulemaking petitions to amend the Table of TV Allotments for which a Notice of Proposed Rule Making had been released and the comment deadline specified therein had not passed prior to the filing date of the TV application; and

(C) Earlier-filed rulemaking petitions to amend the Table of TV Allotments for which a Notice of Proposed Rule Making had not been released.

(3) TV applicants and TV rulemaking petitioners that are mutually exclusive pursuant to this section will be notified by Public Notice and provided with a 90-day period of time to resolve their mutual exclusivity via engineering amendment or settlement. Those applications and petitions that remain mutually exclusive upon conclusion of the 90-day settlement period will be dismissed.

■ 20. Revise § 73.624 to read as follows:

§ 73.624 Television broadcast stations.

(a) Television broadcast stations are assigned channels 6 MHz wide.

(b) Minimum programming requirements. The TV service that is provided pursuant to this paragraph (b) must have a resolution of at least 480i

(vertical resolution of 480 lines, interlaced).

(1) TV licensees or permittees that broadcast in ATSC 1.0 (using the transmission standard in 73.682(d)) shall transmit at least one free over the air video program signal at no direct charge to viewers.

(2) [Reserved]

(3) TV licensees or permittees that choose to broadcast an ATSC 3.0 signal (using the Next Gen TV transmission standard in § 73.682(f)) shall transmit at least one free over the air video programming stream on that signal that requires at most the signal threshold of a comparable received TV signal. TV licensees or permittees that choose to broadcast an ATSC 3.0 signal (using the Next Gen TV transmission standard in § 73.682(f)) shall also simulcast the primary video programming stream on its ATSC 3.0 signal by broadcasting an ATSC 1.0 signal (using the TV transmission standard in § 73.682(d)) from another broadcast television facility within its local market in accordance with the local simulcasting requirement in §§ 73.3801, 73.6029 and 74.782 of this chapter.

(c) Provided that TV broadcast stations comply with paragraph (b) of this section, TV broadcast stations are permitted to offer services of any nature, consistent with the public interest, convenience, and necessity, on an ancillary or supplementary basis. The kinds of services that may be provided include, but are not limited to computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals, subscription video, and any other services that do not derogate TV broadcast stations' obligations under paragraph (b) of this section. Such services may be provided on a broadcast, point-to-point or point-to-multipoint basis, provided, however, that any video broadcast signal provided at no direct charge to viewers shall not be considered ancillary or supplementary.

(1) TV licensees that provide ancillary or supplementary services that are analogous to other services subject to regulation by the Commission must comply with the Commission regulations that apply to those services, provided, however, that no ancillary or supplementary service shall have any rights to carriage under §§ 614 or 615 of the Communications Act of 1934, as amended, or be deemed a multichannel video programming distributor for purposes of section 628 of the Communications Act of 1934, as amended.

(2) In all arrangements entered into with outside parties affecting service operation, the TV licensee or permittee must retain control over all material transmitted in a broadcast mode via the station's facilities, with the right to reject any material in the sole judgement of the permittee or licensee. The license or permittee is also responsible for all aspects of technical operation involving such telecommunications services.

(3) In any application for renewal of a broadcast license for a television station that provides ancillary or supplementary services, a licensee shall establish that all of its program services are in the public interest. Any violation of the Commission's rules applicable to ancillary or supplementary services will reflect on the licensee's qualifications for renewal of its license.

(d) through (f) [Reserved]

(g) Commercial TV licensees and permittees, and low power television, TV translator, and Class A licensees and permittees, must annually remit a fee of 5 percent of the gross revenues derived from all ancillary and supplementary services, as defined by paragraph (c) of this section, which are feeable, as defined in paragraphs (g)(1)(i) and (ii) of this section. Noncommercial TV licensees and permittees must annually remit a fee of 5 percent of the gross revenues derived from all ancillary and supplementary services, as defined by paragraph (c) of this section, which are feeable, as defined in paragraphs (g)(1)(i) and (ii) of this section, except that such licensees and permittees must annually remit a fee of 2.5 percent of the gross revenues from such ancillary or supplementary services which are nonprofit, noncommercial, and educational.

(1)(i) All ancillary or supplementary services for which payment of a subscription fee or charge is required in order to receive the service are feeable. The fee required by this provision shall be imposed on any and all revenues from such services, including revenues derived from subscription fees and from any commercial advertisements transmitted on the service.

(ii) Any ancillary or supplementary service for which no payment is required from consumers in order to receive the service is feeable if the TV licensee directly or indirectly receives compensation from a third party in return for the transmission of material provided by that third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required). The fee required by this provision shall be imposed on any and all revenues from such services, other than revenues received from a third party in return for the transmission of commercial advertisements used to support broadcasting for which a subscription fee is not required.

(2) *Payment of fees.* (i) Each December 1, all commercial and noncommercial TV licensees and permittees that provided feeable ancillary or supplementary services as defined in this section at any point during the 12-month period ending on the preceding September 30 will electronically report, for the applicable period:

(A) A brief description of the feeable ancillary or supplementary services provided;

(B) Gross revenues received from all feeable ancillary and supplementary services provided during the applicable period; and

(C) The amount of bitstream used to provide feeable ancillary or supplementary services during the applicable period. Licensees and permittees will certify under penalty of perjury the accuracy of the information reported. Failure to file information required by this section may result in appropriate sanctions.

(ii) A commercial or noncommercial TV licensee or permittee that has provided feeable ancillary or supplementary services at any point during a 12-month period ending on September 30 must additionally file the FCC's standard remittance form (Form 159) on the subsequent December 1. Licensees and permittees will certify the amount of gross revenues received from feeable ancillary or supplementary services for the applicable 12-month period and will remit the payment of the required fee.

(iii) The Commission reserves the right to audit each licensee's or permittee's records which support the calculation of the amount specified on line 23A of Form 159. Each licensee or permittee, therefore, is required to retain such records for three years from the date of remittance of fees.

■ 21. Amend § 73.625 by:
■ a. Revising the section heading;
■ b. Removing and reserving paragraphs (a) through (b);
■ c. Revising paragraphs (c)(3)(ii) and (v);
■ d. Adding paragraphs (c)(3)(vii) and (viii);
■ e. Revising paragraphs (c)(4)(i) and (ii);
■ f. Adding paragraph (c)(4)(iii);
■ g. Revising paragraph (c)(5); and
■ h. Adding paragraph (d).

The revisions and additions read as follows:

§ 73.625 TV antenna system.

* * * * *

(c) * * *

* * * * *

(3) * * *

(ii) Relative field horizontal plane pattern (patterns for both horizontal and vertical polarization should be included if elliptical or circular polarization is used consistent with paragraph (d) of this section) of the proposed directional antenna. A value of 1.0 should be used for the maximum radiation in the horizontal polarization. The plot of the pattern should be oriented so that 0 degrees corresponds to true North. Where mechanical beam tilt is intended, the amount of tilt in degrees of the antenna vertical axis and the orientation of the downward tilt with respect to true North must be specified. The horizontal plane pattern must reflect the use of mechanical beam tilt if no elevation pattern is included, but it is preferable to submit a separate unmodified horizontal plane pattern with the elevation pattern for mechanically-tilted stations.

* * * * *

(v) All horizontal plane patterns must be plotted in a PDF attachment to the application in a size sufficient to be easily viewed.

* * * * *

(vii) If an elevation pattern is submitted in the application form, similar tabulations and PDF attachments shall be provided for the elevation pattern.

(viii) If a matrix pattern is submitted in the application form, similar tabulations and PDF attachments shall be provided as necessary to accurately represent the pattern.

(4) * * *

(i) In cases where it is proposed to use a tower of an AM broadcast station as a supporting structure for a TV broadcast antenna, an appropriate application for changes in the radiating system of the AM broadcast station must be filed by the licensee thereof. A formal application (FCC Form 301, or FCC Form 340 for a noncommercial educational station) will be required if the proposal involves substantial change in the physical height or radiation characteristics of the AM broadcast antennas; otherwise an informal application will be acceptable. (In case of doubt, an informal application (letter) together with complete engineering data should be submitted.) An application may be required for other classes of stations when the tower is to be used in connection with a TV station.

(ii) When the proposed TV antenna is to be mounted on a tower in the vicinity of an AM station directional antenna system and it appears that the operation of the directional antenna system may be affected, an engineering study must be filed with the TV application concerning the effect of the TV antenna on the AM directional radiation pattern. Field measurements of the AM stations may be required prior to and following construction of the TV station antenna, and readjustments made as necessary.

(iii) In any case, where the TV licensee or permittee proposes to mount its antenna on or near an AM tower, as defined in § 1.30002, the TV licensee or permittee must comply with § 1.30002 or § 1.30003, as applicable.

(5) Applications proposing the use of electrical beam tilt must be accompanied by the following:

* * * * *

(d) It shall be standard to employ horizontal polarization. However, circular or elliptical polarization may be employed if desired, in which case clockwise (right hand) rotation, as defined in the IEEE Standard Definition 42A65–3E2, and transmission of the horizontal and vertical components in time and space quadrature shall be used. For either omnidirectional or directional antennas the licensed effective radiated power of the vertically polarized component may not exceed the licensed effective radiated power of the horizontally polarized component. For directional antennas, the maximum effective radiated power of the vertically polarized component shall not exceed the maximum effective radiated power of the horizontally polarized component in any specified horizontal or vertical direction.

■ 22. Section 73.626 is amended by revising the section heading and paragraphs (a)(b), (c)(1), (2), (d), (e), (f)(2), (f)(2)(i) through (iii), (f)(4), (5), and (6) to read as follows:

§ 73.626 TV distributed transmission systems.

(a) *Distributed transmission systems.* A TV station may be authorized to operate multiple synchronized transmitters on its assigned channel to provide service consistent with the requirements of this section. Such operation is called a distributed transmission system (DTS). Except as expressly provided in this section, TV stations operating a DTS facility must comply with all rules applicable to TV single-transmitter stations.

(b) *Authorized service area.* For purposes of compliance with this section, a station's ''authorized service area'' is defined as the area within its predicted noise-limited service contour determined using the facilities authorized for the station in a license or construction permit for non-DTS, single-transmitter-location operation (its ''authorized facility'').

(c) * * *

(1) TV station zones are defined in § 73.609.

(2) *DTS reference point.* A station's DTS reference point is established in the FCC Order that created or made final modifications to the Table of TV Allotments, § 73.622(j), and the corresponding facilities for the station's channel assignment as set forth in that FCC Order.

(d) *Determining DTS coverage.* The coverage for each DTS transmitter is determined based on the F(50,90) field strength given in the Table of Distances (in paragraph (c) of this section), calculated in accordance with § 73.619(b). The combined coverage of a DTS station is the logical union of the coverage of all DTS transmitters.

(e) *DTS protection from interference.* A DTS station must be protected from interference in accordance with the criteria specified in § 73.620. To determine compliance with the interference protection requirements of § 73.620, the population served by a DTS station shall be the population within the station's combined coverage contour, excluding the population in areas that are outside both the TV station's authorized service area and the Table of Distances area (in paragraph (c) of this section). Only population that is predicted to receive service by the method described in § 73.619(c)(2) from at least one individual DTS transmitter will be considered.

(f) * * *

* * * * *

(2) Each DTS transmitter's coverage is contained within either the TV station's Table of Distances area (pursuant to paragraph (c) of this section) or its authorized service area, except where such extension of coverage meets the following criteria:

(i) In no event shall the F(50,50) service contour of any DTS transmitter extend beyond that of its authorized facility and its Table of Distances F(50,50) area; and

(ii) In no event shall the F(50,10) node-interfering contour of any DTS transmitter, aside from one located at the site of its authorized facility, extend beyond the F(50,10) reference-interfering contour of its authorized facility and its Table of Distances F(50,10) reference area; and

(iii) In no event shall the F(50,10) reference-interfering contour of a facility located at the site of its authorized facility extend beyond the F(50,10) reference-interfering contour of its authorized facility;

* * * * *

(4) The coverage from one or more DTS transmitter(s) is shown to provide principal community coverage as required in § 73.618;

(5) The ''combined field strength'' of all the DTS transmitters in a network does not cause interference to another station in excess of the criteria specified in § 73.620, where the combined field strength level is determined by a ''root-sum-square'' calculation, in which the combined field strength level at a given location is equal to the square root of the sum of the squared field strengths from each transmitter in the DTS network at that location.

(6) Each DTS transmitter must be located within either the TV station's Table of Distances area or its authorized service area.

* * * * *

§ 73.641 [Removed]

■ 23. Remove § 73.641.

§ 73.642 [Removed]

■ 24. Remove § 73.642.

§ 73.643 [Removed]

■ 25. Remove § 73.643.

§ 73.644 [Removed]

■ 26. Remove § 73.644.

§ 73.646 [Removed and Reserved]

■ 27. Remove and reserve § 73.646.

§ 73.653 [Removed and Reserved]

■ 28. Remove and reserve § 73.653.

■ 29. Revise § 73.664 to read as follows:

§ 73.664 Determining operating power.

(a) *Required method.* The operating power of each TV transmitter shall normally be determined by the direct method.

(b) *Direct method.* The direct method of power determination for a TV transmitter uses the indications of a calibrated transmission line meter located at the RF output terminals of the transmitter. The indications of the calibrated meter are used to observe and maintain the authorized operating power of the transmitter. This meter must be calibrated whenever any component in the metering circuit is repaired or replaced and as often as necessary to ensure operation in accordance with the provisions of § 73.1560 of this part. The following calibration procedures are to be used:

(1) The transmission line meter is calibrated by measuring the average power at the output terminals of the transmitter, including any filters which may be used in normal operation. For this determination the average power output is measured while operating into a dummy load of substantially zero reactance and a resistance equal to the transmission line characteristic impedance.

(2) If electrical devices are used to determine the output power, such devices must permit determination of this power to within an accuracy of ±5% of the power indicated by the full scale reading of the electrical indicating instrument of the device. If temperature and coolant flow indicating devices are used to determine the power output, such devices must permit determination of this power to within an accuracy of ±4% of measured average power output. During this measurement the input voltage and current to the final radio frequency amplifier stage and the transmission line meter are to be read and compared with similar readings taken with the dummy load replaced by the antenna. These readings must be in substantial agreement.

(3) The meter must be calibrated with the transmitter operating at 80%, 100%, and 110% of the authorized power as often as may be necessary to maintain its accuracy and ensure correct transmitter operating power. In cases where the transmitter is incapable of operating at 110% of the authorized power output, the calibration may be made at a power output between 100% and 110% of the authorized power output. However, where this is done, the output meter must be marked at the point of calibration of maximum power output, and the station will be deemed to be in violation of this rule if that power is exceeded. The upper and lower limits of permissible power deviation as determined by the prescribed calibration, must be shown upon the meter either by means of adjustable red markers incorporated in the meter or by red marks placed upon the meter scale or glass face. These markings must be checked and changed, if necessary, each time the meter is calibrated.

(c) *Indirect method.* The operating power is determined by the indirect method by applying an appropriate factor to the input power to the final radio-frequency amplifier stage of the transmitter using the following formula:

Formula 1 to introductory text of paragraph (c)

$$\text{Transmitter output power} = Ep \times Ip \times F$$

Where:

Ep = DC input voltage of the final radio-frequency amplifier stage.

Ip = DC input current of the final radio-frequency amplifier stage.

F = Efficiency factor.

(1) If the above formula is not appropriate for the design of the transmitter final amplifier, use a formula specified by the transmitter manufacturer with other appropriate operating parameters.

(2) The value of the efficiency factor, *F* established for the authorized transmitter output power is to be used for maintaining the operating power, even though there may be some variation in *F* over the power operating range of the transmitter.

(3) The value of *F* is to be determined and a record kept thereof by one of the following procedures listed in order of preference:

(i) Using the most recent measurement data for calibration of the transmission line meter according to the procedures described in paragraph (b) of this section or the most recent measurements made by the licensee establishing the value of F. In the case of composite transmitters or those in which the final amplifier stages have been modified pursuant to FCC approval, the licensee must furnish the FCC and also retain with the station records the measurement data used as a basis for determining the value of F.

(ii) Using measurement data shown on the transmitter manufacturer's test data supplied to the licensee, provided that measurements were made at the authorized channel and transmitter output power.

(iii) Using the transmitter manufacturer's measurement data.

§ 73.665 [Removed and Reserved]

■ 30. Remove and reserve § 73.665.

§ 73.667 [Removed and Reserved]

■ 31. Remove and reserve § 73.667.

§ 73.669 [Removed and Reserved]

■ 32. Remove and reserve § 73.669.

■ 33. Revise § 73.681 to read as follows:

§ 73.681 Definitions.

Antenna electrical beam tilt. The shaping of the radiation pattern in the vertical plane of a transmitting antenna by electrical means so that maximum radiation occurs at an angle below the horizontal plane.

Antenna height above average terrain. The average of the antenna heights above the terrain from approximately 3.2 (2 miles) to 16.1 kilometers (10 miles) from the antenna for the eight directions spaced evenly for each 45 degrees of azimuth starting with True North. (In general, a different antenna height will be determined in each direction from the antenna. The average of these various heights is considered the antenna height above the average terrain. Where circular or elliptical polarization is employed, the antenna height above average terrain shall be

based upon the height of the radiation center of the antenna which transmits the horizontal component of radiation.

Antenna mechanical beam tilt. The intentional installation of a transmitting antenna so that its axis is not vertical, in order to change the normal angle of maximum radiation in the vertical plane.

Antenna power gain. The square of the ratio of the root-mean-square free space field strength produced at 1 kilometer in the horizontal plane, in millivolts per meter for one kW antenna input power to 221.4 mV/m. This ratio should be expressed in decibels (dB). (If specified for a particular direction, antenna power gain is based on the field strength in that direction only.)

Aspect ratio. The ratio of picture width to picture height as transmitted.

Auxiliary facility. An auxiliary facility is an antenna separate a from the main facility's antenna, permanently installed on the same tower or at a different location, from which a station may broadcast for short periods without prior Commission authorization or notice to the Commission while the main facility is not in operation (*e.g.,* where tower work necessitates turning off the main antenna or where lightning has caused damage to the main antenna or transmission system) (*See* § 73.1675).

Effective radiated power. The product of the antenna input power and the antenna power gain. This product should be expressed in kW and in dB above 1 kW (dBk). (If specified for a particular direction, effective radiated power is based on the antenna power gain in that direction only. The licensed effective radiated power is based on the maximum antenna power gain. When a station is authorized to use a directional antenna or an antenna beam tilt, the direction of the maximum effective radiated power will be specified.) Where circular or elliptical polarization is employed, the term effective radiated power is applied separately to the horizontally and vertically polarized components of radiation. For assignment purposes, only the effective radiated power authorized for the horizontally polarized component will be considered.

Equivalent isotropically radiated power (EIRP). The term ''equivalent isotropically radiated power'' (also known as ''effective radiated power above isotropic'') means the product of the antenna input power and the antenna gain in a given direction relative to an isotropic antenna.

Free space field strength. The field strength that would exist at a point in the absence of waves reflected from the earth or other reflecting objects.

Interlaced scanning. A scanning process in which successively scanned lines are spaced an integral number of line widths, and in which the adjacent lines are scanned during successive cycles of the field frequency.

Polarization. The direction of the electric field as radiated from the transmitting antenna.

Standard television signal. A signal which conforms to the television transmission standards.

Synchronization. The maintenance of one operation in step with another.

Television broadcast band. The frequencies in the band extending from 54 to 608 megahertz which are assignable to television broadcast stations. These frequencies are 54 to 72 megahertz (channels 2 through 4), 76 to 88 megahertz (channels 5 and 6), 174 to 216 megahertz (channels 7 through 13), and 470 to 608 megahertz (channels 14 through 36).

Television broadcast station. A station in the television broadcast band transmitting simultaneous visual and aural signals intended to be received by the general public.

Television channel. A band of frequencies 6 MHz wide in the television broadcast band and designated either by number or by the extreme lower and upper frequencies.

Television transmission standards. The standards which determine the characteristics of a television signal as radiated by a television broadcast station.

Television transmitter. The radio transmitter or transmitters for the transmission of both visual and aural signals.

Vestigial sideband transmission. A system of transmission wherein one of the generated sidebands is partially attenuated at the transmitter and radiated only in part.

■ 34. Amend § 73.682 by:
■ a. Removing and reserving paragraphs (a) through (c);
■ b. Revising paragraph (d);
■ c. Adding paragraph (e)(7); and
■ d. Removing the Note to § 73.682.

The revision and addition read as follows:

§ 73.682 TV transmission standards.

* * * * *

(d) *Broadcast television transmission standards.* (1) Transmission of broadcast television signals shall comply with the standards (incorporated by reference, see § 73.8000) for such transmissions set forth in:

(i) ATSC A/52;

(ii) ATSC A/53, Parts 1–4 and 6: 2007 and ATSC A/53 Part 5:2010;, and

(iii) ATSC A/65C:.

(2) Although not incorporated by reference, licensees may also consult:

(i) ATSC A/54A: ''Recommended Practice: Guide to Use of the ATSC Digital Television Standard, including Corrigendum No. 1,'' (December 4, 2003, Corrigendum No. 1 dated December 20, 2006, and

(ii) ATSC A/69: ''Recommended Practice PSIP Implementation Guidelines for Broadcasters,'' (June 25, 2002).

(iii) For availability of this material, contact ATSC (see § 73.8000 for contact information).

(e) * * *

(7) For additional information regarding this requirement, *see* Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act, FCC 11–182.

* * * * *

■ 35. Amend § 73.683 by:
■ a. Revising the section heading and paragraph (a);
■ b. Removing and reserving paragraphs (b) and (c); and
■ c. Revising paragraph (d).

The revisions read as follows:

§ 73.683 Presumptive determination of field strength at individual locations.

(a) See § 73.619(c). For purposes of the cross-reference from § 90.307(b), the Grade B contour is defined as the F(50,50) contour at 64 dBu.

* * * * *

(d) For purposes of determining the eligibility of individual households for satellite retransmission of distant network signals under the copyright law provisions of 17 U.S.C. 119(d)(10)(A), field strength shall be determined by the Individual Location Longley-Rice (ILLR) propagation prediction model. Such eligibility determinations shall consider only the signals of network stations located in the subscriber's Designated Market Area. Guidance for use of the ILLR model in predicting the field strength of television signals for such determinations is provided in OET Bulletin No. 73. For availability of OET Bulletin No. 73, contact FCC (see § 73.8000 for contact information).

* * * * *

§ 73.684 [Removed and Reserved]

■ 36. Remove and reserve § 73.684.

§ 73.685 [Removed and Reserved]

■ 37. Remove and reserve § 73.685.
■ 38. Amend § 73.686 by:
■ a. Revising paragraphs (c)(1)(i);
■ b. Removing and reserving paragraph (d); and
■ c. Revising paragraph (e) introductory text.

The revisions read as follows:

§ 73.686 Field strength measurements.

* * * * *

(c) * * *

(1) * * *

(i) The population (P) of the community, and its suburbs, if any, is determined by reference to the most recent official decennial U.S. Census population data as identified by the Media Bureau in a Public Notice. (See § 73.620(b)).

* * * * *

(e) *Collection of field strength data to determine television signal intensity at an individual location—cluster measurements—*

* * * * *

■ 39. Amend § 73.687 by:

■ a. Removing and reserving paragraphs (a) and (b);

■ b. Revising paragraph (c) introductory text;

■ c. Removing and reserving paragraph (c)(1); and

■ d. Removing paragraph (e).

The revisions read as follows:

§ 73.687 Transmission system requirements.

* * * * *

(c) *Requirements applicable to transmitters.* (1) [Reserved].

* * * * *

■ 40. Section 73.688 is amended by revising paragraph (a) to read as follows:

§ 73.688 Indicating instruments.

(a) Each TV broadcast station shall be equipped with indicating instruments which conform with the specifications described in § 73.1215 for measuring the operating parameters of the last radio stage of the transmitter, and with such other instruments as are necessary for the proper adjustment, operation, and maintenance of the transmitting system.

* * * * *

§ 73.691 [Removed and Reserved]

■ 41. Remove and reserve § 73.691.

§ 73.698 [Removed and Reserved]

■ 42. Remove and reserve § 73.698.

§ 73.699 [Amended]

■ 43. Section 73.699 is amended by removing Figures 5, 5(a), 6, 7, 8, 11, 12, 16, and 17.

■ 44. Section 73.1001 is amended to revise paragraph (c) to read as follows:

§ 73.1001 Scope.

* * * * *

(c) Certain provisions of this subpart apply to International Broadcast Stations (subpart F, part 73), LPFM (subpart G, part 73), and Low Power TV and TV Translator Stations (subpart G, part 74) where the rules for those services so provide.

* * * * *

■ 45. Revise § 73.1015 to read as follows:

§ 73.1015 Truthful written statements and responses to Commission inquiries and correspondence.

The Commission or its representatives may, in writing, require from any applicant, permittee, or licensee written statements of fact relevant to a determination whether an application should be granted or denied, or to a determination whether a license should be revoked, or to any other matter within the jurisdiction of the Commission, or, in the case of a proceeding to amend the Table of FM Allotments or Table of TV Allotments, require from any person filing an expression of interest, written statements of fact relevant to that allotment proceeding. Any such statements of fact are subject to the provisions of § 1.17 of this chapter.

■ 46. Section 73.1020 is amended by revising paragraphs (a)(1)(i) and (ii), (2)(i) and (ii), (3)(1)(i) and (ii), (4)(1)(i) and (ii), (5)(1)(i) and (ii), (6)(1)(i) and (ii), (7)(1)(i) and (ii), (8)(1)(i) and (ii), (9)(1)(i) and (ii), (10)(1)(i) and (ii), (11)(1)(i) and (ii), (12)(1)(i) and (ii), (13)(1)(i) and (ii), (14)(1)(i) and (ii), (15)(1)(i) and (ii), (16)(1)(i) and (ii), (17)(1)(i) and (ii), (18)(1)(i) and (ii) and (b) to read as follows:

§ 73.1020 Station license period.

(a) * * *

(1) * * *

(i) Radio stations, October 1, 2027.

(ii) Television stations, October 1, 2028.

(2) * * *

(i) Radio stations, December 1, 2027.

(ii) Television stations, December 1, 2028.

(3) * * *

(i) Radio stations, February 1, 2028.

(ii) Television stations, February 1, 2029.

(4) * * *

(i) Radio stations, April 1, 2028.

(ii) Television stations, April 1, 2029.

(5) * * *

(i) Radio stations, June 1, 2028.

(ii) Television stations, June 1, 2029.

(6) * * *

(i) Radio stations, August 1, 2028.

(ii) Television stations, August 1, 2029.

(7) * * *

(i) Radio stations, October 1, 2028.

(ii) Television stations, October 1, 2029.

(8) * * *

(i) Radio stations, December 1, 2028.

(ii) Television stations, December 1, 2029.

(9) * * *

(i) Radio stations, February 1, 2029.

(ii) Television stations, February 1, 2030.

(10) * * *

(i) Radio stations, April 1, 2029.

(ii) Television stations, April 1, 2030.

(11) * * *

(i) Radio stations, June 1, 2029.

(ii) Television stations, June 1, 2030.

(12) * * *

(i) Radio stations, August 1, 2029.

(ii) Television stations, August 1, 2030.

(13) * * *

(i) Radio stations, October 1, 2029.

(ii) Television stations, October 1, 2022.

(14) * * *

(i) Radio stations, December 1, 2029.

(ii) Television stations, December 1, 2022.

(15) * * *

(i) Radio stations, February 1, 2030.

(ii) Television stations, February 1, 2023.

(16) * * *

(i) Radio stations, April 1, 2030.

(ii) Television stations, April 1, 2023.

(17) * * *

(i) Radio stations, June 1, 2030.

(ii) Television stations, June 1, 2023.

(18) * * *

(i) Radio stations, August 1, 2030.

(ii) Television stations, August 1, 2023.

(b) For the deadline for filing petitions to deny renewal applications, see § 73.3516(e).

* * * * *

■ 47. Section 73.1030 is amended by revising paragraphs (a)(1) and (b)(2) to read as follows:

§ 73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.

(a) ***(1) *Radio astronomy and radio research installations.* In order to minimize harmful interference at the National Radio Astronomy Observatory site located at Green, Pocahontas County, West Virginia, and at the Naval Radio Research Observatory at Sugar Grove, Pendleton County, West Virginia, a licensee proposing to operate a short-term broadcast auxiliary station pursuant to § 74.24, and any applicant for authority to construct a new broadcast station, or for authority to make changes in the frequency, power, antenna height, or antenna directivity of an existing station within the area bounded by 39°15′ N on the north, 78°30′ W on the east, 37°30′ N on the south, and 80°30′ W on the west, shall notify the Interference Office, National

Radio Astronomy Observatory, P.O. Box 2, Green Bank, West Virginia 24944. Telephone: (304) 456–2011; Email: *nrqz@nrao.edu.* * * *

* * * * *

(b) * * *

(2) Applicants concerned are urged to communicate with the Radio Frequency Management Coordinator, Institute for Telecommunication Sciences, 325 Broadway, Boulder, CO 80305; telephone (303) 497–4220, email *frequencymanager@ntia.gov,* in advance of filing their applications with the Commission.

■ 48. Amend § 73.1201 by:

■ a. Revising paragraph (b)(1);

■ b. Removing and reserving paragraph (d); and

■ c. Adding paragraph (e):

The revisions and additions read as follows:

§ 73.1201 Station identification.

* * * * *

(b) * * *

(1) Official station identification shall consist of the station's call letters immediately followed by the community or communities specified in its license as the station's location; Provided, That the name of the licensee, the station's frequency, the station's channel number, as stated on the station's license, and/or the station's network affiliation may be inserted between the call letters and station location. TV stations, or DAB Stations, choosing to include the station's channel number in the station identification must use the station's major channel number and may distinguish multicast program streams. For example, a TV station with major channel number 26 may use 26.1 to identify an HDTV program service and 26.2 to identify an SDTV program service. A TV station that is devoting one of its multicast streams to transmit the programming of another television licensee must identify itself and may also identify the licensee that it is transmitting. If a TV station in this situation chooses to identify the station that is the source of the programming it is transmitting, it must use the following format: Station WYYY, community of license (call sign and community of license of the station whose multicast stream is transmitting the programming), bringing you WXXX, community of license (call sign and community of license of the licensee providing the programming). The transmitting station may insert between its call letters and its community of license the following information: the frequency of the transmitting station, the channel number of the transmitting station, the name of the licensee of the transmitting station and the licensee providing the programming, and/or the name of the network of either station. Where a multicast station is carrying the programming of another station and is identifying that station as the source of the programming, using the format described above, the identification may not include the frequency or channel number of the program source. A radio station operating in DAB hybrid mode or extended hybrid mode shall identify its digital signal, including any free multicast audio programming streams, in a manner that appropriately alerts its audience to the fact that it is listening to a digital audio broadcast. No other insertion between the station's call letters and the community or communities specified in its license is permissible.

* * * * *

(e) Transport Stream ID (TSID) values are identification numbers assigned to stations by the FCC and stored in the Commission's online database. Two sequential values are assigned to each station.

(1) All TV and Class A TV stations shall transmit their assigned odd-numbered TSID.

(2) In ATSC 3.0, a similar value is used called a Bit Stream ID (BSID). Stations operating in ATSC 3.0 mode shall utilize their assigned even-numbered TSID as their BSID, consistent with paragraph (1) of this section.

■ 49. Section 73.1207 is amended by revising paragraph (b)(2) to read as follows:

§ 73.1207 Rebroadcasts.

* * * * *

(b) * * *

* * * * *

(2) Permission must be obtained from the originating station to rebroadcast any subsidiary communications transmitted by means of a multiplex subcarrier.

* * * * *

■ 50. Section 73.1216 is amended by adding paragraphs (a)(1) through (3) and (d), and removing Notes 1, 2 and 3 to read as follows:

§ 73.1216 Licensee-conducted contests.

(a) * * *

(1) A contest is a scheme in which a prize is offered or awarded, based upon chance, diligence, knowledge or skill, to members of the public;

(2) Material terms include those factors which define the operation of the contest and which affect participation therein. Although the material terms may vary widely depending upon the exact nature of the contest, they will generally include: How to enter or participate; eligibility restrictions; entry deadline dates; whether prizes can be won; when prizes can be won; the extent, nature and value of prizes; basis for valuation of prizes; time and means of selection of winners; and/or tie-breaking procedures.

(3) In general, the time and manner of disclosure of the material terms of a contest are within the licensee's discretion. However, the obligation to disclose the material terms arises at the time the audience is first told how to enter or participate and continues thereafter.

* * * * *

(d) This section is not applicable to licensee-conducted contests not broadcast or advertised to the general public or to a substantial segment thereof, to contests in which the general public is not requested or permitted to participate, to the commercial advertisement of non-licensee-conducted contests, or to a contest conducted by a non-broadcast division of the licensee or by a non-broadcast company related to the licensee.

■ 51. Revise § 73.1217 to read as follows:

§ 73.1217 Broadcast hoaxes.

(a) No licensee or permittee of any broadcast station shall broadcast false information concerning a crime or a catastrophe if:

(1) The licensee knows this information is false;

(2) It is foreseeable that broadcast of the information will cause substantial public harm, and

(3) Broadcast of the information does in fact directly cause substantial public harm.

(b) Any programming accompanied by a disclaimer will be presumed not to pose foreseeable harm if the disclaimer clearly characterizes the program as a fiction and is presented in a way that is reasonable under the circumstances.

(c) For purposes of this rule, ''public harm'' must begin immediately, and cause direct and actual damage to property or to the health or safety of the general public, or diversion of law enforcement or other public health and safety authorities from their duties. The public harm will be deemed foreseeable if the licensee could expect with a significant degree of certainty that public harm would occur. A ''crime'' is any act or omission that makes the offender subject to criminal punishment by law. A ''catastrophe'' is a disaster or imminent disaster involving violent or sudden event affecting the public.

■ 52. Section 73.1250 is amended by revising paragraph (e) to read as follows:

§ 73.1250 Broadcasting emergency information.

* * * * *

(e) Immediately upon cessation of an emergency during which broadcast facilities were used for the transmission of point-to-point messages under paragraph (b) of this section, or when daytime facilities were used during nighttime hours by an AM station in accordance with paragraph (f) of this section, a report in letter form shall be forwarded to the FCC's main office indicated in 47 CFR 0.401(a) setting forth the nature of the emergency, the dates and hours of the broadcasting of emergency information, and a brief description of the material carried during the emergency. A certification of compliance with the noncommercialization provision of paragraph (f) of this section must accompany the report where daytime facilities are used during nighttime hours by an AM station, together with a detailed showing, under the provisions of that paragraph, that no other broadcast service existed or was adequate.

* * * * *

■ 53. Section 73.1350 is amended by removing and reserving paragraph (f)(3) and revising paragraph (h) to read as follows:

§ 73.1350 Transmission system operation.

* * * * *

(h) Whenever a transmission system control point is established at a location other than the main studio or transmitter, a letter of notification of that location must be sent to the FCC via a Change of Control Point Notice in LMS, within 3 days of the initial use of that point. The letter should include a list of all control points in use, for clarity. This notification is not required if responsible station personnel can be contacted at the transmitter or studio site during hours of operation.

* * * * *

■ 54. Section 73.1540 is amended by revising paragraph (a) to read as follows:

§ 73.1540 Carrier frequency measurements.

(a) The carrier frequency of each AM and FM station shall be measured or determined as often as necessary to ensure that they are maintained within the prescribed tolerances.

* * * * *

§ 73.1545 [Amended]

■ 55. Section 73.1545 is amended by removing and reserving paragraph (c), and removing paragraph (e) and the Note to paragraph (e).

■ 56. Amend § 73.1560 by:

■ a. Revising paragraphs (a)(1) and (c)(1);

■ b. Removing and reserving paragraph (c)(2); and

■ c. Revising paragraph (d).

The revisions read as follows:

§ 73.1560 Operating power and mode tolerances.

(a) * * *

(1) Except for AM stations using modulation dependent carrier level (MDCL) control technology, or as provided for in paragraph (d) of this section, the antenna input power of an AM station, as determined by the procedures specified in § 73.51, must be maintained as near as practicable to the authorized antenna input power and may not be less than 90 percent nor greater than 105 percent of the authorized power. AM stations may, without prior Commission authority, commence MDCL control technology use, provided that within 10 days after commencing such operation, the licensee submits an electronic notification of commencement of MDCL control operation using FCC Form 2100 Schedule 338. The transmitter of an AM station operating using MDCL control technology, regardless of the MDCL control technology employed, must achieve full licensed power at some audio input level or when the MDCL control technology is disabled. MDCL control operation must be disabled before field strength measurements on the station are taken.

* * * * *

(c) * * *

(1) Except as provided in paragraph (d) of this section, the output power of a TV or Class A TV transmitter, as determined by the procedures specified in § 73.664, must be maintained as near as is practicable to the authorized transmitter output power and may not be less than 80% nor more than 110% of the authorized power.

* * * * *

(d) *Reduced power operation.* In the event it becomes technically impossible to operate at authorized power, a broadcast station may operate at reduced power for a period of not more than 30 days without specific authority from the FCC. If operation at reduced power will exceed 10 consecutive days, notification must be made to the FCC in a Reduced Power Notification via LMS, not later than the 10th day of the lower power operation. In the event that normal power is restored within the 30 day period, the licensee must notify the FCC of the date that normal operation was restored. If causes beyond the control of the licensee prevent restoration of the authorized power within 30 days, a request for Special Temporary Authority (see § 73.1635) must be made to the FCC via LMS for additional time as may be necessary.

§ 73.1570 Modulation levels: AM and FM.

■ 57. Section 73.1570 is amended by revising the section heading to read as set forth above and removing and reserving paragraph (b)(3).

§ 73.1590 [Amended]

■ 58. Section 73.1590 is amended by removing and reserving paragraphs (a)(5), (c)(1), and (3).

■ 59. Section 73.1615 is amended by revising paragraphs (b)(3) and (c)(1) to read as follows:

§ 73.1615 Operating during modification of facilities.

* * * * *

(b) * * *

(3) Operate in a nondirectional mode during the presently licensed hours of directional operation with power reduced to 25% or less of the nominal licensed power, or whatever higher power, not exceeding licensed power, will insure that the radiated field strength specified by the license is not exceeded at any given azimuth for the corresponding hours of directional operation, or

* * * * *

(c) * * *

(1) Should it be necessary to continue the procedures in either paragraph (a) or (b) of this section beyond 30 days, a Silent STA application or an Engineering STA application must be filed via LMS.

* * * * *

■ 60. Section 73.1620 is amended by revising paragraphs (a)(1) through (3), and removing paragraphs (f) and (g) to read as follows:

§ 73.1620 Program tests.

(a) * * *

(1) The permittee of a nondirectional AM or FM station, or a nondirectional or directional TV or Class A TV station, may begin program tests upon notification to the FCC in a ''Program Test Authority'' filing via LMS provided that within 10 days thereafter, an application for a license is filed with the FCC in Washington, DC. Television, Class A, TV translator, and low power television broadcast stations authorized on channel 14 must comply with § 73.617(b)(2)(ii).

(2) The permittee of an FM station with a directional antenna system must file an application for license on FCC

Form 2100 Schedule 302–FM in LMS requesting authority to commence program test operations at full power. This license application must be filed at least 10 days prior to the date on which full power operations are desired to commence. The application for license must contain any exhibits called for by conditions on the construction permit. The staff will review the license application and the request for program test authority and issue a letter notifying the applicant whether full power operation has been approved. Upon filing of the license application and related exhibits, and while awaiting approval of full power operation, the FM permittee may operate the directional antenna at one half (50%) of the authorized effective radiated power. Alternatively, the permittee may continue operation with its existing licensed facilities pending the issuance of program test authority at the full effective radiated power by the staff.

(3) FM licensees replacing a directional antenna pursuant to § 73.1690 (c)(2) without changes which require a construction permit (*see* § 73.1690(b)) may immediately commence program test operations with the new antenna at one half (50%) of the authorized ERP upon installation. If the directional antenna replacement is an EXACT duplicate of the antenna being replaced (*i.e.,* same manufacturer, antenna model number, and measured composite pattern), program tests may commence with the new antenna at the full authorized power upon installation. The licensee must file a modification of license application on FCC Form 2100 Schedule 302–FM within 10 days of commencing operations with the newly installed antenna, and the license application must contain all of the exhibits required by § 73.1690(c)(2). After review of the modification-of-license application to cover the antenna change, the Commission will issue a letter notifying the applicant whether program test operation at the full authorized power has been approved for the replacement directional antenna.

* * * * *

■ 61. Section 73.1635 is amended by revising paragraphs (a)(2), (3), and (5) to read as follows:

§ 73.1635 Special temporary authorizations (STA).

(a) * * *

(2) The request is to be filed electronically in LMS using the ''Engineering STA Application'' and shall fully describe the proposed operation and the necessity for the requested STA. Such letter requests shall be signed by the licensee or the licensee's representative.

(3) A request for a STA necessitated by unforeseen equipment damage or failure may be made without regard to the procedural requirements of this section (*e.g.,* via email or telephone). Any request made pursuant to this paragraph shall be followed by a written confirmation request conforming to the requirements of paragraph (a)(2) of this section. Confirmation requests shall be submitted within 24 hours. (See also § 73.1680 Emergency Antennas).

* * * * *

(5) Certain rules specify special considerations and procedures in situations requiring an STA or permit temporary operation at variance without prior authorization from the FCC when notification is filed as prescribed in the particular rules. See § 73.62, Directional antenna system tolerances; § 73.157, Antenna testing during daytime; § 73.158, Directional antenna monitoring points; § 73.1250, Broadcasting emergency information; § 73.1350, Transmission system operation; § 73.1560, Operating power and mode tolerances; § 73.1570, Modulation levels: AM, and FM; § 73.1615, Operation during modification of facilities; § 73.1680, Emergency antennas; and § 73.1740, Minimum operating schedule.

* * * * *

■ 62. Section 73.1675 is amended by revising paragraphs (a)(1)(iii) and (b) to read as follows:

§ 73.1675 Auxiliary antennas.

(a) * * *

(1) * * *

(iii) TV stations: The noise limited contour as defined in § 73.619(c).

* * * * *

(b) An application for a construction permit to install a new auxiliary antenna, or to make changes in an existing auxiliary antenna for which prior FCC authorization is required (see § 73.1690), must be filed electronically in LMS using FCC Form 2100 (see § 73.3500 for Schedules) for TV and FM stations, or on FCC Form 2100, Schedule 340 for noncommercial educational FM stations, and on FCC Form 301 for AM stations.

* * * * *

■ 63. Section 73.1690 is amended by revising paragraphs (b) introductory text, (b)(3), and (c)(3) to read as follows:

§ 73.1690 Modification of transmission systems.

* * * * *

(b) The following changes may be made only after the grant of a construction permit application on FCC Form 2100 (see § 73.3500 for Schedules) for TV and FM stations, Form 301 for AM stations, or Form 2100, Schedule 340 for noncommercial educational stations:

* * * * *

(3) Any change which would require an increase along any azimuth in the composite directional antenna pattern of an FM station from the composite directional antenna pattern authorized (see § 73.316), or any increase from the authorized directional antenna pattern for a TV broadcast (see § 73.625) or Class A TV station (see § 73.6025).

* * * * *

(c) * * *

(3) A directional TV on Channels 2 through 13 or 22 through 36 or a directional Class A TV on Channels 2 through 13 or 22 through 36, or a directional TV or Class A TV station on Channels 15 through 21 which is in excess of 341 km (212 miles) from a cochannel land mobile operation or in excess of 225 km (140 miles) from a first-adjacent channel land mobile operation (*see* § 74.709(a) and (b) of this chapter for tables of urban areas and reference coordinates of potentially affected land mobile operations), may replace a directional TV or Class A TV antenna by a license modification application, if the proposed horizontal theoretical directional antenna pattern does not exceed the licensed horizontal directional antenna pattern at any azimuth and where no change in effective radiated power will result. The modification of license application on Form 2100 (see § 73.3500 for Schedules) must contain all of the data set forth in § 73.625(c)(3) or § 73.6025(a), as applicable.

* * * * *

■ 64. Section 73.1740 is amended by revising paragraph (a)(4) to read as follows:

§ 73.1740 Minimum operating schedule.

(a) * * *

(4) In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. A ''Reduced Power'' or ''Suspension of Operation'' Notification must be made via LMS not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal

operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

* * * * *

■ 65. Revise § 73.1750 to read as follows:

§ 73.1750 Discontinuance of operation.

The licensee of each station shall provide notification to the FCC in a ''Cancellation Application'' via LMS of the permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Attention: Audio Division (radio) or Video Division (television), Media Bureau, for cancellation. The license of any station that fails to transmit broadcast signals for any consecutive 12 month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary. If a licensee surrenders its license pursuant to an interference reduction agreement, and its surrender is contingent on the grant of another application, the licensee must identify in its notification the contingencies involved.

■ 66. Section 73.2080 is amended by revising paragraphs (c)(6) and (f)(1) through (5) to read as follows:

§ 73.2080 Equal employment opportunities (EEO).

* * * * *

(c) * * *

(6) Annually, on the anniversary of the date a station is due to file its renewal application, the station shall place in its public file, maintained pursuant to § 73.3526 or § 73.3527, and on its website, if it has one, an EEO public file report containing the following information (although if any broadcast licensee acquires a station pursuant to FCC Form 2100 Schedule 314 or FCC Form 2100 Schedule 315 during the twelve months covered by the EEO public file report, its EEO public file report shall cover the period starting with the date it acquired the station):

* * * * *

(f) * * *

(1) All broadcast stations, including those that are part of an employment unit with fewer than five full-time employees, shall file a Broadcast Equal Employment Opportunity Program Report (Form 2100 Schedule 396) with their renewal application. Form 2100 Schedule 396 is filed on the date the station is due to file its application for renewal of license. If a broadcast licensee acquires a station pursuant to FCC Form 2100 Schedule 314 or FCC Form 2100 Schedule 315 during the period that is to form the basis for the Form 2100 Schedule 396, information provided on its Form 2100 Schedule 396 should cover the licensee's EEO recruitment activity during the period starting with the date it acquired the station. Stations are required to maintain a copy of their Form 2100 Schedule 396 in the station's public file in accordance with the provisions of §§ 73.3526 and 73.3527.

(2) The Commission will conduct a mid-term review of the employment practices of each broadcast television station that is part of an employment unit of five or more full-time employees and each radio station that is part of an employment unit of eleven or more full-time employees, four years following the station's most recent license expiration date as specified in § 73.1020. If a broadcast licensee acquires a station pursuant to FCC Form 2100 Schedule 314 or FCC Form 2100 Schedule 315 during the period that is to form the basis for the mid-term review, that review will cover the licensee's EEO recruitment activity during the period starting with the date it acquired the station.

(3) If a station is subject to a time brokerage agreement, the licensee shall file Form 2100 Schedule 396 and EEO public file reports concerning only its own recruitment activity. If a licensee is a broker of another station or stations, the licensee-broker shall include its recruitment activity for the brokered station(s) in determining the bases of Form 2100 Schedule 396 and the EEO public file reports for its own station. If a licensee-broker owns more than one station, it shall include its recruitment activity for the brokered station in the Form 2100 Schedule 396 and EEO public file reports filed for its own station that is most closely affiliated with, and in the same market as, the brokered station. If a licensee-broker does not own a station in the same market as the brokered station, then it shall include its recruitment activity for the brokered station in the Form 2100 Schedule 396 and EEO public file reports filed for its own station that is geographically closest to the brokered station.

(4) Broadcast stations subject to this section shall maintain records of their recruitment activity necessary to demonstrate that they are in compliance with the EEO rule. Stations shall ensure that they maintain records sufficient to verify the accuracy of information provided in Form 2100 Schedule 396 and EEO public file reports. To determine compliance with the EEO rule, the Commission may conduct inquiries of licensees at random or if it has evidence of a possible violation of the EEO rule. In addition, the Commission will conduct random audits. Specifically, each year approximately five percent of all licensees in the television and radio services will be randomly selected for audit, ensuring that, even though the number of radio licensees is significantly larger than television licensees, both services are represented in the audit process. Upon request, stations shall make records available to the Commission for its review.

(5) The public may file complaints throughout the license term based on the contents of a station's public file. Provisions concerning filing, withdrawing, or non-filing of informal objections or petitions to deny license renewal, assignment, or transfer applications are delineated in §§ 73.3584 and 73.3587–3589 of the Commission's rules.

* * * * *

■ 67. Section 73.3500 is amended by revising paragraphs (a) and (b) and removing paragraph (b)(1) to read as follows:

§ 73.3500 Application and report forms.

(a) Following are the FCC broadcast application and report forms, listed by number.

Form No.	Title
175	Application to Participate in an FCC Auction.
301	Application for Construction Permit for a Commercial Broadcast Station. (the Form 301 is used for new AM construction permits or AM station modifications).
2100 Schedule A	Application for Authority to Construct or Make Changes in a TV Commercial Broadcast/Noncommercial Educational Broadcast Station.

Form No.	Title
2100 Schedule 301–FM	Application for Commercial FM Station Construction Permit.
302–AM	Application for AM Broadcast Station License.
2100 Schedule E	Application for Class A Television Broadcasting Station Construction Permit.
2100 Schedule 302–FM	Application for FM Station License.
2100 Schedule B	Application for Television Broadcast Station License.
2100 Schedule F	Application for Class A Television Broadcast Station License.
2100 Schedule 303–S	Application for Renewal of License for Commercial or Noncommercial AM, FM, TV, Class A TV, FM Translator, TV Translator, LPTV, or LPFM Station.
308	Application for Permit to Deliver Programs to Foreign Broadcast Stations.
309	Application for Authority to Construct or Make Changes in an International or Experimental Broadcast Station.
310	Application for an International or Experimental Broadcast Station License.
311	Application for Renewal of an International or Experimental Broadcast Station License.
2100 Schedule 314	Application for Consent to Assignment of Broadcast Station Construction Permit or License.
2100 Schedule 315	Application for Consent to Transfer of Control of Entity Holding Broadcast Station Construction Permit or License.
2100 Schedule 316	Application for Consent to Assign Broadcast Station Construction Permit or License or Transfer Control of Entity Holding Broadcast Station Construction Permit or License.
2100 Schedule 318	Application for Low Power FM Station Construction Permit.
2100 Schedule 319	Application for Low Power FM Station License.
323	Ownership Report for Commercial Broadcast Stations.
323–E	Ownership Report for Noncommercial Educational Broadcast Stations.
2100 Schedule 340	Application for Noncommercial Educational FM Station Construction Permit.
2100 Schedule 345	Application for Consent to Assign Construction Permit or License for TV or FM Translator or Low Power TV Station, or to Transfer Control of Entity Holding TV or FM Translator or Low Power TV Station.
2100 Schedule C	Application for Authority to Construct or Make Changes in a Low Power TV or TV Translator Station.
2100 Schedule D	Application for a Low Power TV or TV Translator Station License.
2100 Schedule 349	Application for FM Translator or FM Booster Station Construction Permit.
2100 Schedule 350	Application for FM Translator or FM Booster Station License.
395–B	Annual Employment Report and instructions.
2100 Schedule 396	Broadcast Equal Employment Opportunity Program Report.
2100 Schedule 396–A	Broadcast Equal Employment Opportunity Model Program Report.
2100 Schedule H	Children's Television Programming Report.
601	FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.
603	FCC Wireless Telecommunications Bureau Application for Assignments of Authorization and Transfers of Control.

(b) Any application on Form 2100 must be filed electronically.

■ 68. Section 73.3516 is amended by revising paragraphs (e) introductory text and (e)(1) to read as follows:

§ 73.3516 Specification of facilities.

* * * * *

(e) A petition to deny an application for renewal of license of an existing broadcast station will be considered as timely filed if it is tendered for filing by the end of the first day of the last full calendar month of the expiring license term.

(1) If the license renewal application is not timely filed as prescribed in § 73.3539, the deadline for filing petitions to deny thereto is the 90th day after the FCC gives public notice that it has accepted the late-filed renewal application for filing.

* * * * *

■ 69. Section 73.3519 is amended by revising paragraph (a) to read as follows:

§ 73.3519 Repetitious applications.

(a) Where the FCC has denied an application for a new station or for any modification of services or facilities, or dismissed such application with prejudice, no like application involving service of the same kind for substantially the same area by substantially the same applicant, or his successor or assignee, or on behalf or for the benefit of the original parties in interest, may be filed within 12 months from the effective date of the FCC's action.

* * * * *

■ 70. Revise § 73.3521 to read as follows:

§ 73.3521 Mutually exclusive applications for low power television, and television translator stations.

When there is a pending application for a new low power television or television translator station, or for major changes in an existing station, no other application which would be directly mutually exclusive with the pending application may be filed by the same applicant or by any applicant in which any individual in common with the pending application has any interest, direct or indirect, except that interests or less than 1% will not be considered.

§ 73.3523 [Removed and Reserved]

■ 71. Remove and reserve § 73.3523.

■ 72. Section 73.3525 is amended by revising paragraphs (a) introductory text and (b) and removing the Note to read as follows:

§ 73.3525 Agreements for removing application conflicts.

(a) Whenever applicants for a construction permit for a broadcast station enter into an agreement to procure the removal of a conflict between applications pending before the FCC by withdrawal or amendment of an application or by its dismissal pursuant to § 73.3568, all parties thereto shall, within 5 days after entering into the agreement, file with the FCC a joint request for approval of such agreement. The joint request shall be accompanied by a copy of the agreement, including any ancillary agreements, and an affidavit of each party to the agreement setting forth:

* * * * *

(b) Except where a joint request is filed pursuant to paragraph (a) of this section, any applicant filing an amendment pursuant to § 73.3522(b)(1) and (c), or a request for dismissal pursuant to § 73.3568(b)(1) and (c), which would remove a conflict with another pending application; or a petition for leave to amend pursuant to § 73.3522(b)(2) which would permit a

grant of the amended application or an application previously in conflict with the amended application; or a request for dismissal pursuant to § 73.3568(b)(2), shall file with it an affidavit as to whether or not consideration (including an agreement for merger of interests) has been promised to or received by such applicant, directly or indirectly, in connection with the amendment, petition or request. Although § 74.780 of the Rules makes this section generally applicable to low power TV and TV translators stations, paragraph (b) of this section shall not be applicable to such stations.

* * * * *

■ 73. Amend § 73.3533 by:

■ a. Revising paragraphs (a)(1), (4) through (7);

■ b. Adding paragraph (a)(8); and

■ c. Revising paragraph (b).

The revisions and additions read as follows:

§ 73.3533 Application for construction permit or modification of construction permit.

(a) * * *

(1) FCC Form 2100, Schedule A (TV); FCC Form 2100, Schedule 301–FM (FM), ''Application for Authority to Construct or Make Changes in an Existing Commercial Broadcast Station.''

* * * * *

(4) FCC Form 2100, Schedule A (TV); FCC Form 2100, Schedule 340 (FM), ''Application for Authority to Construct or Make Changes in a Noncommercial Educational Broadcast Station.''

(5) FCC Form 2100, Schedule C, ''Application for Authority to Construct or Make Changes in a Low Power TV or TV Translator Station.''

(6) FCC Form 2100, Schedule 349, ''Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station.''

(7) FCC Form 2100, Schedule 318, ''Application for Construction Permit for a Low Power FM Broadcast Station.''

(8) FCC Form 2100, Schedule E, ''Application for Authority to Make Changes in a Class A TV Station.''

(b) The filing of an application for modification of construction permit does not extend the expiration date of the construction permit.

* * * * *

■ 74. Section 73.3536 is amended by revising paragraphs (b)(1)(ii) and (iii), (b)(4) through (6), and (c) to read as follows:

§ 73.3536 Application for license to cover construction permit.

* * * * *

(b) * * *

(1) * * *

(ii) Form 2100, Schedule 302–FM for FM stations, ''Application for FM Station License.''

(iii) Form 2100, Schedule B for television stations, ''Application for TV Station Broadcast License.''

* * * * *

(4) FCC Form 2100, Schedule D, ''Application for a Low Power TV or TV Translator Station License.''

(5) FCC Form 2100, Schedule 350, ''Application for an FM Translator or FM Booster Station License.''

(6) FCC Form 2100, Schedule 319, ''Application for a Low Power FM Broadcast Station License.''

(c) Eligible low power television stations which have been granted a certificate of eligibility may file FCC Form 2100, Schedule F, ''Application for Class A Television Broadcast Station License.''

■ 75. Section 73.3540 is amended by revising paragraphs (c) through (e), and (f) introductory text to read as follows:

§ 73.3540 Application for voluntary assignment or transfer of control.

* * * * *

(c) Application for consent to the assignment of construction permit or license must be filed on FCC Form 2100 Schedule 314 ''Assignment of License or Construction Permit'' or FCC Form 2100 Schedule 316 (See paragraph (f) of this section). For International Broadcast Stations, the application shall be filed electronically in the International Bureau Filing System (IBFS).

(d) Application for consent to the transfer of control of an entity holding a construction permit or license must be filed on FCC Form 2100 Schedule 315 ''Transfer of Control'' or FCC Form 2100 Schedule 316 (see paragraph (f) of this section). For International Broadcast Stations, applications shall be filed electronically in IBFS.

(e) Application for consent to the assignment of construction permit or license or to the transfer of control of an entity licensee or permittee for an FM or TV translator station, a low power TV station and any associated auxiliary station, such as translator microwave relay stations and UHF translator booster stations, only must be filed on FCC Form 2100 Schedule 345 ''Application for Consent to Assign Construction Permit or License for TV or FM Translator or Low Power TV Station or to Transfer Control of Entity Holding TV or FM Translator, or a Low Power TV Station.''

(f) The following assignment or transfer applications may be filed on FCC Form 2100 Schedule 316:

* * * * *

■ 76. Section 73.3541 is amended by revising paragraph (b) to read as follows:

§ 73.3541 Application for involuntary assignment of license or transfer of control.

* * * * *

(b) Within 30 days after the occurrence of such death or legal disability, an application on FCC Form 2100 Schedule 316 shall be filed requesting consent to involuntary assignment of such permit or license or for involuntary transfer of control of the entity holding such permit or license, to a person or entity legally qualified to succeed to the foregoing interests under the laws of the place having jurisdiction over the estate involved.

§ 73.3543 [Removed]

■ 77. Remove § 73.3543.

■ 78. Section 73.3544 is amended by revising paragraphs (b) introductory text and paragraph (c) to read as follows:

§ 73.3544 Application to obtain a modified station license.

* * * * *

(b) An electronic filing via LMS of an Administrative Update, see § 73.3511(b), may be filed with the FCC, to cover the following changes:

* * * * *

(c) A change in the name of the licensee where no change in ownership or control is involved may be accomplished by electronically filing via LMS an Administrative Update.

■ 79. Revise § 73.3549 to read as follows:

§ 73.3549 Requests for extension of time to operate without required monitors, indicating instruments, and EAS encoders and decoders.

Requests for extension of authority to operate without required monitors, transmission system indicating instruments, or encoders and decoders for monitoring and generating the EAS codes and Attention Signal should be made to the FCC by electronically filing via LMS a STA. Such requests must contain information as to when and what steps were taken to repair or replace the defective equipment and a brief description of the alternative procedures being used while the equipment is out of service.

■ 80. Section 73.3550 is amended by revising paragraphs (a), (b), (f), (i) through (k), and (m) to read as follows:

§ 73.3550 Requests for new or modified call sign assignments.

(a) All requests for new or modified call sign assignments for radio and television broadcast stations shall be made via LMS with the FCC. Licensees and permittees may utilize LMS to determine the availability and licensing status of any call sign; to select an initial call sign for a new station; to change a station's currently assigned call sign; to modify an existing call sign by adding or deleting an ''-FM,'' ''-TV,'' or ''-DT'' suffix; to exchange call signs with another licensee or permittee in the same service; or to reserve a different call sign for a station being transferred or assigned.

(b) No request for an initial call sign assignment will be accepted from a permittee for a new radio or full-service television station until the FCC has granted a construction permit. Each such permittee shall request the assignment of its station's initial call sign expeditiously following the grant of its construction permit. All initial construction permits for low power TV stations will be issued with a low power TV call sign in accordance with § 74.791(a) of this chapter.

* * * * *

(f) Only four-letter call signs (plus an LP, FM, TV, DT, or CA suffix, if used) will be assigned. The four letter call sign for LPFM stations will be followed by the suffix ''-LP.'' However, subject to the other provisions of this section, a call sign of a station may be conformed to a commonly owned station holding a three-letter call assignment (plus FM, TV, DT, CA or LP suffixes, if used).

* * * * *

(i) The provisions of this section shall not apply to International broadcast stations or to stations authorized under part 74 of this chapter (except as provided in § 74.791).

(j) A change in call sign assignment will be made effective on the date specified in the Call Sign Request Authorization generated by LMS acknowledging the assignment of the requested new call sign and authorizing the change. Unless the requested change in call sign assignment is subject to a pending transfer or assignment application, the requester is required to include in its on-line call sign request a specific effective date to take place within 45 days of the submission of its electronic call sign request. Postponement of the effective date will be granted only in response to a timely request and for only the most compelling reasons.

(k) Four-letter combinations commencing with ''W'' or ''K'' which are assigned as call signs to ships or to other radio services are not available for assignment to broadcast stations, with or without the ''-FM,'' ''-TV,'' or ''-DT'' suffix.

* * * * *

(m) Where a requested call sign, without the ''-FM,' ''-TV,'' ''-CA,'' ''-DT,'' or ''-LP'' suffix, would conform to the call sign of any other non-commonly owned station(s) operating in a different service, an applicant utilizing the on-line reservation and authorization system will be required to certify that consent to use the secondary call sign has been obtained from the holder of the primary call sign.

■ 81. Section 73.3555 is amended by revising paragraph (b)(1)(i) to read as follows:

§ 73.3555 Multiple ownership.

* * * * *

(b) * * *

(1) * * *

(i) The digital noise limited service contours of the stations (computed in accordance with § 73.619(c)) do not overlap; or

* * * * *

■ 82. Amend § 73.3572 by:

■ a. Revising the section heading, paragraphs (a)(2) through (3);

■ b. Removing and reserving paragraph (a)(4);

■ c. Revising paragraphs (c) and (f); and

■ d. Removing paragraphs (g) and (h).

The revisions read as follows:

§ 73.3572 Processing of TV broadcast, Class A TV broadcast, low power TV, and TV translators applications.

(a) * * * (2) In the case of Class A TV stations authorized under subpart J of this part and low power TV and TV translator stations authorized under part 74 of this chapter, a major change is any change in:

* * * * *

(3) Other changes will be considered minor, including changes made to implement a channel sharing arrangement, provided they comply with the other provisions of this section.

* * * * *

(c) Amendments to Class A TV, low power TV and TV translator stations, or non-reserved television applications, which would require a new file number pursuant to paragraph (b) of this section, are subject to competitive bidding procedures and will be dismissed if filed outside a specified filing period. See 47 CFR 73.5002(a). When an amendment to an application for a reserved television allotment would require a new file number pursuant to paragraph (b) of this section, the applicant will have the opportunity to withdraw the amendment at any time prior to designation for a hearing if applicable; and may be afforded, subject to the discretion of the Administrative Law Judge, an opportunity to withdraw the amendment after designation for a hearing.

* * * * *

(f) Applications for minor modification of Class A TV, low power TV and TV translator stations may be filed at any time, unless restricted by the FCC, and will be processed on a ''first-come/first-served'' basis, with the first acceptable application cutting off the filing rights of subsequent, competing applicants. Provided, however, that applications for minor modifications of Class A TV and those of TV broadcast stations may become mutually exclusive until grant of a pending Class A TV or TV broadcast minor modification application.

■ 83. Section 73.3578 is amended by revising paragraph (b) to read as follows:

§ 73.3578 Amendments to applications for renewal, assignment or transfer of control.

* * * * *

(b) Any amendment to an application for assignment of construction permit or license, or consent to the transfer of control of an entity holding such a construction permit or license, shall be considered to be a minor amendment, except that any amendment which seeks a change in the ownership interest of the proposed assignee or transferee which would result in a change in control, or any amendment which would require the filing of FCC Form 2100 Schedules 314, 315, or 345 (*see* § 73.3500), if the changes sought were made in an original application for assignment or transfer of control, shall be considered to be a major amendment. However, the FCC may, within 15 days after the acceptance for filing of any other amendment, advise the applicant that the amendment is considered to be a major amendment and therefore is subject to the provisions of § 73.3580.

■ 84. Section 73.3584 is amended by revising paragraphs (a) and (c) to read as follows:

§ 73.3584 Procedure for filing petitions to deny.

(a) For mutually exclusive applications subject to selection by competitive bidding (non-reserved channels) or fair distribution/point system (reserved channels), petitions to deny may be filed only against the winning bidders or tentative selectee(s), and such petitions will be governed by §§ 73.5006 and 73.7004, respectively. For all other applications the following

rules will govern. Except in the case of applications for new low power TV and TV translator stations, for major changes in the existing facilities of such stations, or for applications for a change in output channel tendered by displaced low power TV and TV translator stations pursuant to § 73.3572(a)(1), any party in interest may file with the Commission a Petition to Deny any application (whether as originally filed or if amended so as to require a new file number pursuant to § 73.3571(j), § 73.3572(b), § 73.3573(b), § 73.3574(b) or § 73.3578) for which local notice pursuant to § 73.3580 is required, provided such petitions are filed prior to the day such applications are granted or designated for hearing; but where the FCC issues a public notice pursuant to the provisions of § 73.3571(c), § 73.3572(c) or § 73.3573(d), establishing a ''cut-off'' date, such petitions must be filed by the date specified. In the case of applications for transfers and assignments of construction permits or station licenses, Petitions to Deny must be filed not later than 30 days after issuance of a public notice of the acceptance for filing of the applications. In the case of applications for renewal of license, Petitions to Deny may be filed at any time up to the deadline established in § 73.3516(e). Requests for extension of time to file Petitions to Deny applications for new broadcast stations or major changes in the facilities of existing stations or applications for renewal of license will not be granted unless all parties concerned, including the applicant, consent to such requests, or unless a compelling showing can be made that unusual circumstances make the filing of a timely petition impossible and the granting of an extension warranted.

* * * * *

(c) In the case of applications for new low power TV and TV translator stations, for major changes in the existing facilities of such stations, or for applications for a change in output channel tendered by displaced low power TV and TV translator stations pursuant to § 73.3572(a)(1), any party in interest may file with the FCC a Petition to Deny any application (whether as originally filed or if amended so as to require a new file number pursuant to § 73.3572(b)) for which local notice pursuant to § 73.3580 is required, provided such petitions are filed within 30 days of the FCC Public Notice proposing the application for grant (applicants may file oppositions within 15 days after the Petition to Deny is filed); but where the FCC selects a tentative permittee pursuant to Section 1.1601 *et seq.,* Petitions to Deny shall be accepted only if directed against the tentative selectee and filed after issuance of and within 15 days of FCC Public Notice announcing the tentative selectee. The applicant may file an opposition within 15 days after the Petition to Deny is filed. In cases in which the minimum diversity preference provided for in § 1.1623(f)(1) has been applied, an ''objection to diversity claim'' and opposition thereto, may be filed against any applicant receiving a diversity preference, within the same time period provided herein for Petitions and Oppositions. In all pleadings, allegations of fact or denials thereof shall be supported by appropriate certification. However, the FCC may announce, by the Public Notice announcing the acceptance of the last-filed mutually exclusive application, that a notice of Petition to Deny will be required to be filed no later than 30 days after issuance of the Public Notice.

* * * * *

■ 85. Revise § 73.3587 to read as follows:

§ 73.3587 Procedure for filing informal objections.

Before FCC action on any application for an instrument of authorization, any person may file informal objections to the grant in LMS. Such objections may be submitted in letter form (without extra copies) and shall be signed. The limitation on pleadings and time for filing pleadings provided for in § 1.45 of the rules shall not be applicable to any objections duly filed under this section.

■ 86. Amend § 73.3598 by:

■ a. Revising paragraphs (a) introductory text;

■ b. Removing and reserving paragraph (b)(3); and

■ c. Revising paragraph (c).

The revisions read as follows:

§ 73.3598 Period of construction.

(a) Except as provided in the last two sentences of this paragraph (a), each original construction permit for the construction of a new TV, AM, FM or International Broadcast; low power TV; low power FM; TV translator; FM translator; or FM booster station, or to make changes in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. An eligible entity that acquires an issued and outstanding construction permit for a station in any of the services listed in this paragraph (a) shall have the time remaining on the construction permit or eighteen months from the consummation of the assignment or transfer of control, whichever is longer, within which to complete construction and file an application for license. For purposes of the preceding sentence, an ''eligible entity'' shall include any entity that qualifies as a small business under the Small Business Administration's size standards for its industry grouping, as set forth in 13 CFR parts 121 through 201, at the time the transaction is approved by the FCC, and holds:

* * * * *

* * * * *

(c) A permittee must notify the Commission as promptly as possible and, in any event, within 30 days, of any pertinent event covered by paragraph (b) of this section, and provide supporting documentation. All notifications must be filed in LMS and must be placed in the station's local public file. For authorizations to construct stations in the Low Power FM service, on FM channels reserved for noncommercial educational use, and for noncommercial educational full power television stations, the Commission will identify and grant an initial period of tolling when the grant of a construction permit is encumbered by administrative or judicial review under the Commission's direct purview (*e.g.,* petitions for reconsideration and applications for review of the grant of a construction permit pending before the Commission and any judicial appeal of any Commission action thereon), a request for international coordination under paragraph (b)(4) of this section, or failure of a condition under paragraph (b)(5) of this section. When a permit is encumbered by administrative or judicial review outside of the Commission's direct purview (*e.g.,* local, state, or non-FCC Federal requirements), the permittee is required to notify the Commission of such tolling events.

* * * * *

■ 87. Section 73.3700 is amended by revising paragraphs (a)(2) and removing and reserving paragraphs (a)(6), (7), (17), (b)(1) through (4), removing paragraph (c)(6), and removing and reserving paragraphs (d), (g)(1) through (3), to read as follows:

§ 73.3700 Post-incentive auction licensing and operation.

(a) * * *

* * * * *

(2) *Channel reassignment public notice.* For purposes of this section, *Channel Reassignment Public Notice* means the public notice released upon

the completion of the broadcast television spectrum incentive auction conducted under section 6403 of the *Spectrum* Act specifying the new channel assignments and technical parameters of any broadcast television stations that are reassigned to new channels. *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced,* GN Docket No. 12–268, Public Notice, 32 FCC Rcd 2786 (WTB/MB 2017).

* * * * *

■ 88. Revise § 73.4000 to read as follows:

§ 73.4000 Listing of FCC policies.

The following sections list, solely for the purpose of reference and convenience, certain Policies of the FCC. The present listing of FCC policies and citations thereto should not be relied upon as an all-inclusive list. Failure to include a policy in this list does not affect its validity. In addition, documents listed may be revised by subsequent decisions and the inclusion of a document on this list does not necessarily reflect that it is currently valid. Each section bears the title of one Policy and the citations which will direct the user to the specific document(s) pertaining to that Policy.

■ 89. Revise § 73.4017 to read as follows:

§ 73.4017 Application processing: Commercial FM stations.

See §§ 73.5000 through 73.5009.

■ 90. Revise § 73.4055 to read as follows:

§ 73.4055 Cigarette advertising.

See 15 U.S.C. 1335; 15 U.S.C. 4402(c).

■ 91. Revise § 73.4060 to read as follows:

§ 73.4060 Citizens agreements.

(a) See Report and Order, Docket 20495, FCC 75–1359, adopted December 10, 1975. 57 F.C.C. 2d 42; 40 FR 459730, December 30, 1975.

* * * * *

§ 73.4082 [Removed and Reserved]

■ 92. Remove and reserve § 73.4082.

■ 93. Revise § 73.4100 to read as follows:

§ 73.4100 Financial qualifications; new AM and FM stations.

See Public Notice, FCC 78–556, dated August 2, 1978. 69 FCC 2d 407; 43 FR 34841, August 7, 1978. *See also Revision of Application for Construction Permit for Commercial Broadcast Station (FCC Form 301),* Memorandum Opinion and Order, 50 R.R.2d 381, para. 6 (1981) and *Certification of Financial Qualification by Applicants for Broadcast Station Construction Permits,* Public Notice, 2 FCC Rcd 2122 (1987), 52 FR 17333 (May 7, 1987).

■ 94. Revise § 73.4101 to read as follows:

§ 73.4101 Financial qualifications, TV stations.

See Public Notice, FCC 79–299, dated May 11, 1979. 72 F.C.C. 2d 784; 44 FR 29160, May 18, 1979. *See also Revision of Application for Construction Permit for Commercial Broadcast Station (FCC Form 301),* Memorandum Opinion and Order, 50 R.R.2d 381, para. 6 (1981) and *Certification of Financial Qualification by Applicants for Broadcast Station Construction Permits,* Public Notice, 2 FCC Rcd 2122 (1987), 52 FR 17333 (May 7, 1987).

§ 73.4107 [Removed and Reserved]

■ 95. Remove and reserve § 73.4107.

§ 73.4108 [Removed and Reserved]

■ 96. Remove and reserve § 73.4108.

■ 97. Revise § 73.4210 to read as follows:

§ 73.4210 Procedure Manual: "The Public and Broadcasting".

See *The Public and Broadcasting,* a copy of which is available at: *https://www.fcc.gov/media/radio/public-and-broadcasting.*

§ 73.4247 [Removed and Reserved]

■ 98. Remove and reserve § 73.4247.

■ 99. Section 73.4267 is amending by revising paragraphs (a) and (b) and removing paragraph (c) to read as follows:

§ 73.4267 Time brokerage.

(a) See Report and Order, MM Docket Nos. 94–150, 92–51, 87–154, FCC 99–207, adopted August 5, 1999, 64 FR 50622 (Sept. 17, 1999).

(b) See § 73.3555, Note 2(j).

§ 73.4247 [Removed and Reserved]

■ 100. Remove and reserve § 73.4247.

■ 101. Section 73.5000 is amended by revising paragraph (a) to read as follows:

§ 73.5000 Services subject to competitive bidding.

(a) Mutually exclusive applications for new facilities and for major changes to existing facilities in the following broadcast services are subject to competitive bidding: AM; FM; FM translator; television; low-power television; television translator; and Class A television. Mutually exclusive applications for minor modifications of Class A television and television broadcast are also subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in part 73 or part 74 of this chapter.

* * * * *

■ 102. Section 73.5005 is amended by revising paragraph (a) to read as follows:

§ 73.5005 Filing of long-form applications.

(a) Within thirty (30) days following the close of bidding and notification to the winning bidders, unless a longer period is specified by public notice, each winning bidder must submit an appropriate long-form application (FCC Form 2100) for each construction permit or license for which it was the high bidder. Long-form applications filed by winning bidders shall include the exhibits required by § 1.2107(d) of this chapter (concerning any bidding consortia or joint bidding arrangements); § 1.2110(j) of this chapter (concerning designated entity status, if applicable); and § 1.2112 of this chapter (concerning disclosure of ownership and real party in interest information, and, if applicable, disclosure of gross revenue information for small business applicants).

* * * * *

■ 103. Section 73.5006 is amended by revising paragraph (b) to read as follows:

§ 73.5006 Filing of petitions to deny against long-form applications.

* * * * *

(b) Within ten (10) days following the issuance of a public notice announcing that a long-form application for an AM, FM or television construction permit has been accepted for filing, petitions to deny that application may be filed in LMS. Within fifteen (15) days following the issuance of a public notice announcing that a long-form application for a low-power television, television translator or FM translator construction permit has been accepted for filing, petitions to deny that application may be filed. Any such petitions must contain allegations of fact supported by affidavit of a person or persons with personal knowledge thereof.

* * * * *

■ 104. Section 73.5007 is amended by revising paragraph (b)(2)(iii), (3)(iv), and (v) to read as follows:

§ 73.5007 Designated entity provisions.

* * * * *

(b) * * *

(2) * * *

(iii) Television broadcast station—the noise limited contour (*see* § 73.619(c));

* * * * *

(3) * * *

(iv) Television broadcast station—the noise limited contour (*see* § 73.619(c)).

(v) Low power television or television translator station—predicted, protected contour (see § 74.792(a) of this chapter).

* * * * *

■ 105. Amend § 73.6000 by revising the definition for ''Locally-produced programming'' to read as follows:

§ 73.6000 Definitions.

* * * * *

Locally produced programming is programming produced within the predicted noise-limited contour (*see* § 73.619(c)) of a Class A station broadcasting the program or within the contiguous predicted noise-limited contours of any of the Class A stations in a commonly owned group.

* * * * *

■ 106. Section 73.6010 is amended by removing and reserving paragraph (b) and by revising paragraph (d) to read as follows:

§ 73.6010 Class A TV station protected contour.

* * * * *

(d) The Class A TV station protected contour is calculated from the effective radiated power and antenna height above average terrain, using the F(50,90) signal propagation method specified in § 73.619(b)(1) of this part.

§ 73.6012 [Removed and Reserved]

■ 107. Remove and reserve § 73.6012.

§ 73.6013 [Removed and Reserved]

■ 108. Remove and reserve § 73.6013.

§ 73.6014 [Removed and Reserved]

■ 109. Remove and reserve § 73.6014.

■ 110. Revise § 73.6017 to read as follows:

§ 73.6017 Class A TV station protection of Class A TV stations.

An application to change the facilities of a Class A TV station will not be accepted if it fails to protect authorized Class A stations in accordance with the requirements of § 74.793 (b) through (d) and § 74.793(g) of this chapter. This protection must be afforded to applications for changes in other authorized Class A stations filed prior to the date the Class A application is filed.

■ 111. Revise § 73.6018 to read as follows:

§ 73.6018 Class A TV station protection of TV stations.

Class A TV stations must protect the TV service that would be provided by the facilities specified in the Table of TV Allotments in § 73.622(j), by authorized TV stations, and by applications that propose to expand TV stations' allotted or authorized coverage contour in any direction. Protection of these allotments, stations, and applications must be based on meeting the requirements of § 74.793 (b) through (e) of this chapter. An application to change the facilities of a Class A TV station will not be accepted if it fails to protect these TV allotments, stations, and applications in accordance with this section.

■ 112. Revise § 73.6019 to read as follows:

§ 73.6019 Class A TV station protection of low power TV and TV translator stations.

An application to change the facilities of a Class A TV station will not be accepted if it fails to protect authorized low power TV and TV translator stations in accordance with the requirements of § 74.793(b) through (d) and (h) of this chapter. This protection must be afforded to applications for changes filed prior to the date the Class A station application is filed.

■ 113. Revise § 73.6020 to read as follows:

§ 73.6020 Protection of stations in the land mobile radio service.

An application to change the facilities of an existing Class A TV station will not be accepted if it fails to protect stations in the land mobile radio service pursuant to the requirements specified in § 74.709 of this chapter.

■ 114. Section 73.6022 is revised to read as follows:

§ 73.6022 Negotiated interference.

(a) Notwithstanding the technical criteria in this subpart, Subpart E of this part, and Subpart G of part 74 of this chapter regarding interference protection to and from Class A TV stations, Class A TV stations may negotiate agreements with parties of authorized and proposed TV, LPTV, TV translator, Class A TV stations or other affected parties to resolve interference concerns; *provided,* however, other relevant requirements are met with respect to the parties to the agreement. A written and signed agreement must be submitted with each application or other request for action by the Commission. Negotiated agreements under this paragraph can include the exchange of money or other considerations from one entity to another. Applications submitted pursuant to the provisions of this paragraph will be granted only if the Commission finds that such action is consistent with the public interest.

(b) [Reserved]

■ 115. Revise § 73.6023 to read as follows:

§ 73.6023 Distributed transmission systems.

Station licensees may operate a commonly owned group of digital Class A stations with contiguous predicted TV noise-limited contours (pursuant to § 73.619(c)) on a common television channel in a distributed transmission system.

■ 116. Section 73.6024 is amended by revising paragraphs (b), removing and reserving paragraph (c) and revising paragraph (d) to read as follows:

§ 73.6024 Transmission standards and system requirements.

* * * * *

(b) A Class A TV station may continue to operate with the transmitter operated under its previous LPTV license, provided such operation does not cause any condition of uncorrectable interference due to radiation of radio frequency energy outside of the assigned channel. Such operation must continue to meet the requirements of § 74.750 of this chapter.

(c) [Reserved]

(d) A Class A station must meet the emission requirements of § 74.794 of this chapter. Stations within 275 kilometers of the US-Mexico border shall specify the full-service emission mask.

■ 117. Amend § 73.6025 by:

■ a. Revising paragraph (a) introductory text;

■ b. Removing paragraphs (a)(1) through (5);

■ c. Removing and reserving paragraph (b); and

■ d. Revising paragraph (d).

The revisions read as follows:

§ 73.6025 Antenna system and station location.

(a) Applications for modified Class A TV facilities proposing the use of directional antenna systems must include all appropriate documentation specified in § 73.625(c)(3).

* * * * *

(d) Class A TV stations are subject to the provisions in § 73.617(d) regarding blanketing interference.

■ 118. Revise § 73.6026 to read as follows:

§ 73.6026 Broadcast regulations applicable to Class A television stations.

The following rules are applicable to Class A television stations:

(a) § 73.603 Numerical designation of television channels.

(b) § 73.624(b), (c) and (g) Television broadcast stations.

(c) § 73.658 Affiliation agreements and network program practice; territorial exclusivity in non-network program arrangements.

(d) § 73.664 Determining operating power.

(e) § 73.670 Commercial limits in children's programs.

(f) § 73.671 Educational and informational programming for children.

(g) § 73.673 Public information initiatives regarding educational and informational programming for children.

(h) § 73.688 Indicating instruments.

(i) § 73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.

(j) § 73.3615(a) and (g) Ownership reports.

§ 73.6027 [Removed and Reserved]

■ 119. Remove and reserve § 73.6027.

■ 120. Section 73.8000 is revised to read as follows:

§ 73.8000 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Federal Communications Commission (FCC) must publish a document in the **Federal Register** and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at the FCC and at the National Archives and Records Administration (NARA). Contact the FCC at: Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from the following sources:(a) Advanced Television Systems Committee (ATSC), 1300 I Street NW, Suite 400E, Washington, DC 20005; website: *www.atsc.org/standards.html.*

(1) ATSC A/52: ''ATSC Standard Digital Audio Compression (AC–3),'' 1995, IBR approved for § 73.682.

(2) ATSC A/53 Parts 1–4 and 6: 2007 ''ATSC Digital Television Standard,'' (January 3, 2007) and ATSC A/53 Part 5: 2010 ''ATSC Digital Television Standard: Part 5—AC–3 Audio System Characteristic,'' (July 6, 2010); IBR approved for § 73.682. as listed below:

(i) A/53, Part 1:2007, ''Digital Television System'' (January 3, 2007),.

(ii) A/53, Part 2:2007, ''RF/Transmission System Characteristics'' (January 3, 2007).

(iii) A/53, Part 3:2007, ''Service Multiplex and Transport Subsystem Characteristics'' (January 3, 2007).

(iv) A/53, Part 4:2007, ''MPEG–2 Video System Characteristics'' (January 3, 2007), except for § 6.1.2 of A/53 Part 4: 2007, and the phrase ''see Table 6.2'' in section 6.1.1 Table 6.1 and section 6.1.3 Table 6.3.

(v) A/53, Part 5: 2010, ''AC–3 Audio System Characteristics'' (July 6, 2010).

(vi) A/53, Part 6:2007, ''Enhanced AC–3 Audio System Characteristics'' (January 3, 2007).

(3) ATSC A/65C: ''ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable, Revision C With Amendment No. 1 dated May 9, 2006,'' (January 2, 2006), IBR approved for §§ 73.682.

(4) ATSC A/85:2013 ''ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television,'' (March 12, 2013) (''ATSC A/85 RP''), IBR approved for § 73.682.

(5) ATSC A/321:2016, ''System Discovery and Signaling'' (March 23, 2016), IBR approved for § 73.682.

(6) ATSC A/322:2017 ''Physical Layer Protocol'' (June 6, 2017), IBR approved for § 73.682.

(b) Federal Communications Commission (FCC), Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a), or at the FCC's Office of Engineering and Technology (OET) website: *www.fcc.gov/oet/info/documents/bulletins/.*

(1) OET Bulletin No. 69: ''Longley-Rice Methodology for Evaluating TV Coverage and Interference'' (February 6, 2004), IBR approved for § 73.616.

(2) [Reserved]

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 121. The authority for Part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 325, 336, and 554.

■ 122. Section 74.701 is amended by revising paragraph (f) to read as follows:

§ 74.701 Definitions.

* * * * *

(f) *Low power TV station.* A station authorized under the provisions of this subpart that may retransmit the programs and signals of a TV broadcast station and that may originate programming in any amount greater than 30 seconds per hour.

* * * * *

■ 123. Section 74.732 is amended by revising paragraph (e) to read as follows:

§ 74.732 Eligibility and licensing requirements.

* * * * *

(e) A proposal to change the primary TV station being retransmitted or an application of a licensed translator station to include low power TV station operation, *i.e.,* program origination will be subject only to a notification requirement.

* * * * *

■ 124. Section 74.787 is amended by revising paragraph (a)(5)(v) to read as follows:

§ 74.787 Licensing.

(a) * * *

(5) * * *

* * * * *

(v) *Pre-auction digital service area* is the geographic area within the full power station's noise-limited contour that was protected in the incentive auction repacking process. The service area of the digital-to-digital replacement translator shall be limited to only the demonstrated loss area within the full power station's pre-auction digital service area, provided that an applicant for a digital-to-digital replacement television translator may propose a *de minimis* expansion of its full power pre-auction digital service area upon demonstrating that the expansion is necessary to replace a loss in its pre-auction digital service area.

* * * * *

■ 125. Section 74.792 is amended by revising paragraph (b) to read as follows:

§ 74.792 Low power TV and TV translator station protected contour.

* * * * *

(b) The low power TV or TV translator protected contour is calculated from the authorized effective radiated power and antenna height above average terrain, using the F(50,90) signal propagation method specified in § 73.619(b)(1) of this chapter.

■ 126. Section 74.793 is amended by revising paragraphs (b), (e), (g), and (h) to read as follows:

§ 74.793 Low power TV and TV translator station protection of broadcast stations.

* * * * *

(b) Except as provided in this section, interference prediction analysis is based on the interference thresholds (D/U signal strength ratios) and other criteria and methods specified in § 73.620 of this chapter.

* * * * *

(e) Protection to the authorized facilities of TV broadcast stations shall

be based on not causing predicted interference to the population within the service area defined and described in § 73.619(c) of this chapter, except that a low power TV or TV translator station must not cause a loss of service to 0.5 percent or more of the population predicted to receive service from the authorized TV facilities.

* * * * *

(g) Protection to the authorized facilities of Class A TV stations shall be based on not causing predicted interference to the population within the service area defined and described in § 73.6010 of this chapter, respectively, except that a low power TV or TV translator station must not cause a loss of service to 0.5 percent or more of the population predicted to receive service from the authorized Class A TV facilities.

(h) Protection to the authorized facilities of low power TV and TV translator stations shall be based on not causing predicted interference to the population within the service area defined and described in § 74.792, except that a low power TV or TV translator station must not cause a loss of service to 2.0 percent or more of the population predicted to receive service from the authorized low power TV or TV translator station.

* * * * *

■ 127. Section 74.794 is amended by revising the section heading, paragraphs (b) introductory text, (b)(1) and (2) to read as follows:

§ 74.794 Emissions.

* * * * *

(b) In addition to meeting the emission attenuation requirements of the simple or stringent mask (including attenuation of radio frequency harmonics), low power TV and TV translator stations authorized to operate on TV channels 22–24, (518–536 MHz), 32–36 (578–608 MHz), 38 (614–620 MHz), and 65–69 (776–806 MHz) must provide specific ''out of band'' protection to Radio Navigation Satellite Services in the bands: L5 (1164–1215 MHz); L2 (1215–1240 MHz) and L1 (1559–1610 MHz).

(1) An FCC-certificated transmitter specifically certified for use on one or more of the above channels must include filtering with an attenuation of not less than 85 dB in the GPS bands, which will have the effect of reducing harmonics in the GPS bands from what is produced by the transmitter, and this attenuation must be demonstrated as part of the certification application to the Commission.

(2) For an installation on one of the above channels with a transmitter not specifically FCC-certificated for the channel, a low pass filter or equivalent device rated by its manufacturer to have an attenuation of at least 85 dB in the GPS bands, which will have the effect of reducing harmonics in the GPS bands from what is produced by the transmitter, and must be installed in a manner that will prevent the harmonic emission content from reaching the antenna. A description of the low pass filter or equivalent device with the manufacturer's rating or a report of measurements by a qualified individual shall be retained with the station license. Field measurements of the second or third harmonic output of a transmitter so equipped are not required.

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Part V

Consumer Product Safety Commission

16 CFR Parts 1112 and 1263

Safety Standard and Notification Requirements for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries; Proposed Rule

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112 and 1263

[CPSC Docket No. 2023–0004]

Safety Standard and Notification Requirements for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking (NPR).

SUMMARY: As required by Reese's Law, to eliminate or adequately reduce the risk of injury from ingestion of button cell or coin batteries by children 6 years old and younger, the U.S. Consumer Product Safety Commission (CPSC or Commission) proposes a rule to establish performance requirements for battery compartments on consumer products that contain, or are designed to use, one or more button cell or coin batteries. The proposed rule also requires warning labels on the packaging of button cell or coin batteries, as well as on the packaging, battery compartments, and accompanying instructions and manuals of consumer products containing button cell or coin batteries. In addition to implementing Reese's Law, the proposed rule requires manufacturers and importers of button cell or coin batteries, and consumer products containing such batteries, to notify consumers of performance and technical data related to the safety of such batteries at the point of sale, both online and in stores. If the rule is finalized, consumer products subject to the rule must be tested and certified as compliant with the rule.

DATES: Submit comments by March 13, 2023.

ADDRESSES: Comments related to the Paperwork Reduction Act aspects of the testing and certification, and the marking, labeling, and instructional literature requirements of the proposed mandatory standard, should be directed to the Office of Information and Regulatory Affairs, the Office of Management and Budget, Attn: CPSC Desk Officer, FAX: 202–395–6974, or emailed to *oira_submission@omb.eop.gov.*

You may submit all other comments, identified by Docket No. CPSC–2023–0004, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by electronic mail (email), except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal.

Mail/Hand Delivery/Courier/Confidential Written Submissions: Submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2023–0004, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Daniel Taxier, Project Manager, Division of Mechanical and Combustion Engineering, Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; (301) 987–2211, or by email to: *dtaxier@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority [1]

A. Explanation of Reese's Law

President Biden signed Reese's Law, Public Law 117–171, into law on August 16, 2022. 15 U.S.C. 2056e. The purpose of Reese's Law is to protect children 6 years old and younger against hazards associated with the ingestion of button cell or coin batteries. Based on a review of the medical literature, CPSC incident data, and data from the National Capital Poison Center (NCPC), an ingestion hazard is associated with swallowing or inserting a button cell or coin battery that becomes lodged (impacted) in the body (typically in the esophagus but potentially in the airways or gastrointestinal tract), which can cause death or serious injury through choking, generation of hazardous chemicals, leaking of hazardous chemicals, electrical burns, pressure necrosis (tissue damage), or other means. See Tab B of Staff's NPR Briefing Package.[2]

Although this proposed rule is primarily intended to address hazards associated with oral ingestion of button cell or coin batteries by children 6 years old or younger, the performance and labeling requirements in the proposed rule will likely also reduce insertion of these batteries in the nose. The data on button cell or coin batteries demonstrate that insertions of batteries into the nose can be aspirated into the trachea and become an ingestion that lodges in the esophagus. This scenario presents the same hazard as an oral ingestion of a button cell or coin battery. Accordingly, the proposed labeling requirements include warnings regarding ingestion and insertion.

To address ingestion of button cell or coin batteries, section 2(a) of Reese's Law requires the Commission to publish a final consumer product safety standard for button cell or coin batteries, and consumer products containing button cell or coin batteries, not later than 1 year after the date of enactment, meaning by August 16, 2023. 15 U.S.C. 2056e(a). A ''button cell or coin battery'' is broadly defined in section 5 of Reese's Law as ''(A) a single cell battery with a diameter greater than the height of the battery; or (B) any other battery, regardless of the technology used to produce an electrical charge, that is determined by the Commission to pose an ingestion hazard.'' [3] Thus, the

[1] On January 25, 2023, the Commission voted (4–0) to publish this notice of proposed rulemaking. Chair Hoehn-Saric and Commissioners Boyle and Trumka issued statements in connection with their vote; statements are available at: *https://www.cpsc.gov/s3fs-public/RCA-NPR-Safety-Standard-and-Notification-Requirements-for-Button-Cell-or-Coin-Batteries-and-Consumer-Products-Containing-Such-Batteries.pdf?VersionId=b9niiZNO11I3MDqWW4JRIkEcBY3Dxp3z.*

[2] The information in this proposed rule is based on information and analysis provided in the January 11, 2023, Staff Briefing Package: Draft Proposed Rule to Establish a Safety Standard and Notification Requirements for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries (Staff's NPR Briefing Package), available at: *https://www.cpsc.gov/s3fs-public/NoticeofProposedRulemakingSafetyStandardandNotificationRequirementsforButtonCellorCoinBatteriesandConsumerProductsContainingSuchBatteries.pdf?VersionId=kDinNeydktkt3T8RRtzN4u1GTXPRjpEl.*

[3] Definitions in section 5 of Reese's Law are codified in the Notes to 15 U.S.C. 2056e.

definition of an in-scope product does not depend on the battery chemistry, but rather the shape of the battery (which contributes to the ingestion-related risk) and, as stated in part (B), whether the battery otherwise is associated with an ingestion hazard, which is consistent with the stated purpose in section 2(a)(1) of Reese's Law. 15 U.S.C. 2056e(a)(1).

This proposed rule focuses on addressing button cell and coin batteries under part (A) of the definition because other batteries where the diameter is less than the height, such as AAA cylindrical batteries, do not pose the same type or degree of ingestion hazard as button cell or coin batteries. Cylindrical batteries can pose a choking hazard, and CPSC is aware that consumers have ingested cylindrical batteries. However, the medical literature shows that injury or death due to ingestion of a cylindrical battery is rare. *See* Staff's NPR Briefing Package at Tab B, Section II.B. Consequently, the Commission is not including cylindrical batteries in the proposed rule at this time. If CPSC becomes aware of a serious ingestion hazard associated with another battery type, section 2(g) of Reese's Law allows the Commission to undertake additional rulemaking to address the hazard at any time. 15 U.S.C. 2056e(g).

Reese's Law defines a ''consumer product containing button cell or coin batteries'' as ''a consumer product containing or designed to use one or more button cell or coin batteries, regardless of whether such batteries are intended to be replaced by the consumer or are included with the product or sold separately.'' [4] We preliminarily construe this definition to include products that are not sold with a battery, if they are designed to use a button cell or coin battery.

Section 2 of Reese's Law requires the Commission to issue a rule containing performance requirements for consumer products that contain button cell or coin batteries, and labeling requirements. Any rule issued under section 2(a) of Reese's Law will be considered a consumer product safety rule promulgated under section 9 of the Consumer Product Safety Act (CPSA). 15 U.S.C. 2056e(c); 15 U.S.C. 2058. CPSC's rule under section 2 of Reese's Law must be issued in accordance with the notice and comment provisions of the Administrative Procedure Act (APA). 5 U.S.C. 553; 15 U.S.C. 2056e(a). Insofar as this proposed rule is based on section 2 of Reese's Law, it sets forth provisions implementing the statute's required performance and labeling requirements—and ''only'' those requirements, as specified in section 2(a). The standard promulgated under section 2(a) of Reese's Law shall apply to consumer products and battery packaging manufactured or imported after the effective date of the standard. *See* 15 U.S.C. 2056e Notes.

Section 2(a)(1) of Reese's Law mandates that the rule must include performance requirements for button cell or coin battery compartments on consumer products to secure them in a manner that eliminates or adequately reduces the risk of injury from the ingestion of button cell or coin batteries by children who are 6 years old or younger, during reasonably foreseeable use or misuse of the product. 15 U.S.C. 2056e(a)(1).

Section 2(a)(2) of Reese's Law mandates warning label requirements in a rule. Warnings are required:

- On the packaging of button cell or coin batteries (15 U.S.C. 2056e(a)(2)(A));
- On the packaging of consumer products containing button cell or coin batteries (15 U.S.C. 2056e(a)(2)(A));
- In any literature, such as a user manual, that accompanies a consumer product containing button cell or coin batteries (15 U.S.C. 2056e(a)(2)(B));
- As practicable, directly on a consumer product that contains button cell or coin batteries in a manner visible to the consumer upon installation or replacement of the button cell or coin battery (15 U.S.C. 2056e(a)(2)(C)(i));
- As practicable, in the case of a product for which the battery is not intended to be replaced or installed by the consumer, to be included directly on the consumer product in a manner that is visible to the consumer upon access to the battery compartment, except that if it is impracticable to label the product, this information shall be placed on the packaging or instructions (15 U.S.C. 2056e(a)(2)(C)(ii)).

Warning labels required by section 2(a) of Reese's Law must: (1) clearly identify the hazard of ingestion; and (2) instruct consumers, as practicable, to keep new and used batteries out of the reach of children, to seek immediate medical attention if a battery is ingested, and to follow any other consensus medical advice. 15 U.S.C. 2056e(b).

Section 4 of Reese's Law specifically exempts from the performance and labeling requirements in section 2 of the law, any toy product [5] that is in compliance with the battery accessibility and labeling requirements in 16 CFR part 1250, Safety Standard Mandating ASTM F963 for Toys. 15 U.S.C. 2056e Notes. However, children's products that contain button cell or coin batteries and that are not a ''toy product,'' would be required to meet the performance and labeling requirements in this proposed rule. An example of such products would be children's apparel, such as shoes, that light up and use a button cell or coin battery as a power source.

Section 2(d) of Reese's Law (15 U.S.C. 2056e(d)(1)) requires the Commission to rely on the provisions in a voluntary standard if, before promulgating a final rule, the Commission determines that: (A) a voluntary standard exists that meets the requirements for a standard promulgated under section 2(a) of Reese's Law with respect to any consumer product, and (B) the voluntary standard is in effect at the time of the determination by the Commission, or will be in effect not later than the date that is 180 days after the date of the enactment of Reese's Law (*i.e.,* February 12, 2023). The Commission must publish in the **Federal Register**, any determination regarding a voluntary standard under this provision. 15 U.S.C. 2056e(d)(2).

As set forth in section IV.A and V.A of this preamble, the Commission preliminarily determines that no existing voluntary standard fully meets the requirements in section 2(a) of Reese's Law. Accordingly, the Commission is proposing a rule that would meet the requirements of Reese's Law for all consumer products within the scope of the rule that is based on modifications to several existing voluntary standards. Because the Commission is proposing its own rule under Reese's Law, the procedural requirements in sections 2(e) and 2(f) of Reese's Law for relying upon a voluntary standard are not applicable. 15 U.S.C. 2056e(e) and (f).

Section 3 of Reese's Law requires special packaging for button cell or coin batteries. These requirements, codified in the Notes to 15 U.S.C. 2056e, are self-implementing, and do not require CPSC to issue a rule. Section 3(a) of Reese's Law states that not later than 180 days after the date of enactment of the Act, meaning February 12, 2023, button cell or coin batteries sold, offered for sale, manufactured for sale, distributed in commerce, or imported into the United States, or included separately with a

[4] 15 U.S.C. 2056e Notes. The term ''consumer product'' has the same meaning as that in section 3(a) of the Consumer Product Safety Act (CPSA). 15 U.S.C. 2052(a).

[5] Consistent with 16 CFR part 1250, a ''toy product'' is defined as ''any object designed, manufactured, or marketed as a plaything for children under 14 years of age.'' Notes to 15 U.S.C. 2056e.

consumer product sold, offered for sale, manufactured for sale, distributed in commerce, or imported into the United States, must be packaged in accordance with the standards provided in 16 CFR 1700.15, and tested in accordance with 16 CFR 1700.20 or another test method specified by rule by the Commission. 15 U.S.C. 2056e Notes. The requirements in section 3(a) shall be treated as a standard for special packaging of a household substance under section 3(a) of the Poison Prevention Packaging Act (PPPA). *Id.;* 15 U.S.C. 1472(a). At this time the Commission is not proposing a rule to implement section 3 of Reese's Law, which is effective by operation of the statute on February 12, 2023.[6]

B. Explanation of Section 27(e) of the CPSA

Finally, distinct from implementation of Reese's Law, and as described in section VI of this preamble, the Commission is also proposing to use its longstanding authority under section 27(e) of the CPSA (15 U.S.C. 2076(e)) to require notification of additional technical and performance data related to the safety of button cell or coin batteries that is to be provided to the original consumer at the time of sale, specifically on websites and in-store displays for the sale of button cell or coin batteries and consumer products that contain such batteries. Although these draft notification requirements are codified together with the safety standard requirements proposed under Reese's Law, this is for the convenience of the public and the Commission, to ease compliance and enforcement. The two sets of requirements arise from different statutory authority and are legally distinct.

II. Products Subject to the Proposed Rule

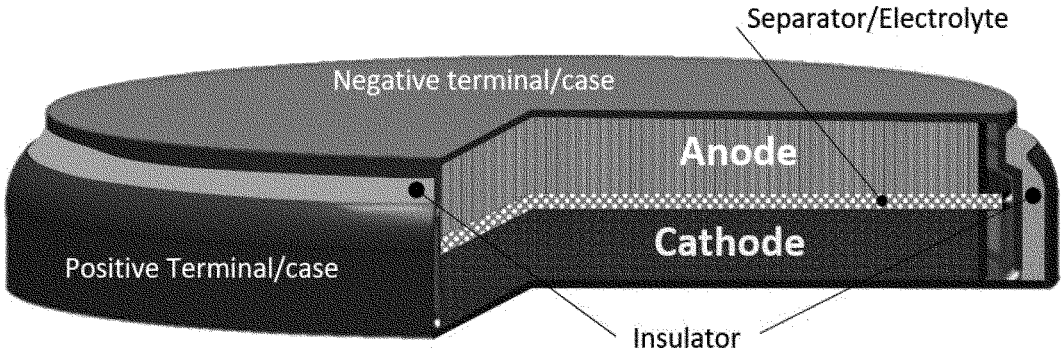
As required by Reese's Law, the proposed rule establishes performance requirements for child-resistant button cell or coin battery compartments on consumer products that contain, or are designed to contain, such batteries. Reese's Law also requires warning labels for the: (1) packaging of button cell or coin batteries; (2) packaging of consumer products containing such button cell or coin batteries; (3) where practicable, battery compartments on consumer products that use button cell or coin batteries (regardless of whether they are replaceable); and (4) any literature, such as a user manual, that accompanies a consumer product containing button cell or coin batteries. 15 U.S.C. 2056e(a), (b).

A. Description of Button Cell or Coin Batteries Within the Scope of the NPR

In general, button cell batteries are small, single-cell batteries that range from 5 mm to 32 mm (0.2 in. to 1.3 in.) in diameter and 1 mm to 6 mm (0.04 in. to 0.24 in.) in thickness. Reese's Law defines ''button cell or coin battery'' as: (A) a single cell battery with a diameter greater than the height of the battery; or (B) any other battery, regardless of the technology used to produce an electrical charge, that is determined by the Commission to pose an ingestion hazard. 15 U.S.C. 2056e Notes. As explained above, this proposed rule focuses on addressing button cell and coin batteries under part (A), because other batteries where the diameter is less than the height, such as AAA cylindrical batteries, do not pose the same type or degree of ingestion hazard as button cell or coin batteries.

A button cell or coin battery (also referred to as a cell or disc/disk battery) stores chemical energy, which is converted to electrical energy when the battery is connected to a circuit. A button cell or coin battery consists of an anode (negative terminal), a cathode (positive terminal), and a separator and electrolyte between the anode and cathode, as shown in Figure 1. When the battery terminals are connected with a conductive material, such as when the battery is pressed into moist human tissue, an electric circuit is formed, and electric current flows through the conductive material and between the terminals. Button cell or coin batteries come in many shapes and sizes and are composed of different materials and chemicals. Power (voltage and capacity) and size requirements are the main driver of battery shape, chemical composition, and the number of required batteries.

Figure 1. Battery Construction

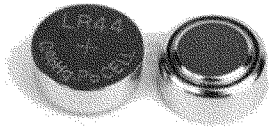
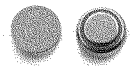


Button cell batteries, like those shown in Figure 2, are used to power small, portable electronic products, such as wrist watches and calculators. Button cell batteries are usually disposable, single-cell batteries. Common anode materials are zinc or lithium. Common cathode materials are manganese dioxide, silver oxide, carbon monofluoride, cupric oxide, or oxygen from the air. Button cell batteries tend

[6] Section 4 of Reese's Law exempts from the special packaging requirements in section 3(a) of Reese's Law, button cell or coin batteries that comply with the marking and packaging provisions in the ANSI Safety Standard for Portable Lithium Primary Cells and Batteries (ANSI C18.3M). Packaged button cell or coin batteries that meet the ANSI standard are exempt from the special packaging requirements in section 3(a) of Reese's Law, but not from the labeling requirements in section 2(a) of Reese's Law, as implemented in this proposed rule. Labeling on such battery packaging can meet both the ANSI standard and this proposed rule; CPSC's labeling requirements are additive to ANSI C18.3M labeling requirements.

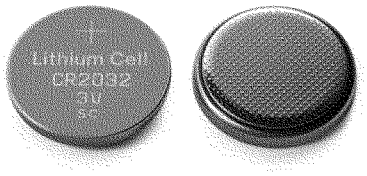
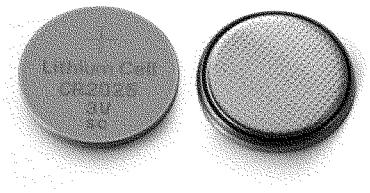
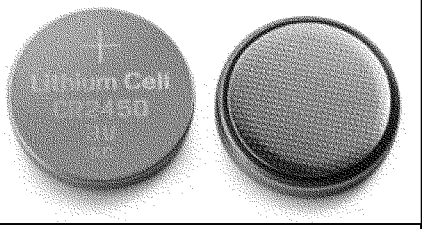
to be manganese dioxide (alkaline) (1.5v) or silver oxide (1.55v).

Figure 2. Example Button Cell Batteries

		
LR44 button cell, 11.6mm (0.45 inch) diameter x 5.4mm (0.21 inch) thick	LR754 button cell, 7.9 mm (0.31 inch) diameter, 5.4mm (0.21 inch) thick	LR626 button cell, 6.8 mm (0.26 inch) diameter, 2.6mm (0.10 inch) thick

Lithium coin batteries, shown in Figure 3, were originally developed as a 3-volt power source for low-drain and battery-backup applications; because of their high-energy density, correspondingly small size, and long shelf life, manufacturers have found lithium coin batteries useful for other applications as well. Lithium coin batteries are commonly around 20 mm (0.787 inch) in diameter.

Figure 3. Example Lithium Coin Batteries

		
CR2032, 20mm (0.787 inch) diameter	CR2025, 20mm (0.787 inch) diameter	CR2450, 24mm (0.945 inch) diameter

B. Description of Consumer Products Within the Scope of the NPR

Consumer products containing, or designed to use, one or more button cell or coin batteries, whether they are replaceable or not, are subject to the rule. 15 U.S.C. 2056e Note. These products may be sold with batteries included, or batteries may be sold separately. The term ''consumer product'' has the same meaning as described in section 3(a)(5) of the CPSA, 15 U.S.C. 2052(a)(5): broadly, ''any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise.''

Under the CPSA, a ''consumer product'' does not include any article that is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer, which may include products used only in a professional capacity (*i.e.,* expensive heavy machinery used only by professionally trained operators that is typically sold only to businesses and not to consumers). Moreover, a ''consumer product'' does not include products within the jurisdiction of some other Federal agencies, such as motor vehicles and motor vehicle equipment (*e.g.,* motor vehicle key fobs), or food, drugs, medical devices, or cosmetics (*e.g.,* thermometers, hearing aids). 15 U.S.C. 2052(a)(5).

''Toy products'' are also exempt from this proposed rule, pursuant to section 4 of Reese's Law, if they are in compliance with the battery accessibility and labeling requirements of 16 CFR part 1250 (the ''toy standard''). A ''toy product'' is any object designed, manufactured, or marketed as a plaything for children under 14 years of age. Section 4 of Reese's Law, 15 U.S.C. 2056e Notes. Not all children's products are toys, however. A ''children's product'' is a consumer product that is ''designed or intended primarily for children 12 years of age or younger.'' 15 U.S.C. 2052(a)(2). The Commission's regulation at 16 CFR part 1200 further interprets the term. For example, children's clothing containing button cell or coin batteries, or child-themed non-toy products that use button cell or coin batteries, are children's products subject to the requirements of this proposed rule.

Consumer products within the scope of the proposed rule include common household portable devices, wearable accessories, and decorative electronic devices. Some examples of household objects that may use button cell or coin batteries are remote controls, games and toys, calculators, keychain flashlights, watches, flashing shoes and clothing, musical greeting cards, cameras, flameless candles, and holiday ornaments.

C. Description of Packaging Subject to the NPR

Reese's Law requires warnings on the packaging of button cell and coin batteries, and on consumer products that contain button cell or coin batteries. 15 U.S.C. 2056e(a), (b). Accordingly, CPSC staff reviewed consumer product and button cell and coin battery packaging to determine what, if any, warnings were already present. Staff found that some manufacturers of button cell or coin batteries include on the packaging of those batteries a safety statement, such as: ''Keep away from small children. If swallowed promptly

see a doctor,'' or ''CAUTION: Keep batteries away from children. If swallowed, consult a physician at once.'' *See* Staff's NPR Briefing Package, p 7, Figures 5 and 6.

As reflected in ANSI Z535.4 American National Standard Product Safety Signs and Labels (ANSI Z535.4), use of the word ''CAUTION'' on a warning label signals less severe injuries than using ''WARNING.'' For example, the word ''WARNING'' should be used for hazards where serious injury or death will occur. Staff found that packaging for the more hazardous lithium coin batteries often includes the icon: ''Keep out of Reach'' on the front and the signal word ''WARNING,'' followed by a statement that ''Death or serious injury can occur in as little as 2 hours if swallowed'' on the back side of the packaging, along with additional safety information related to the ingestion hazard and other hazards. *See, e.g.,* Staff's NPR Briefing Package, p. 8, Figure 7.

Unlike the packaging for button cell and coin batteries, CPSC staff's review of packaging for consumer products that contain a button cell or coin battery found that such packaging does not consistently warn that the product uses a button cell or coin battery; nor does the packaging consistently include warnings that button cell or coin batteries pose an ingestion hazard (*see, e.g.,* Staff's NPR Briefing Package, p. 8–9, Figures 8 and 9). However, accompanying literature, when provided with a consumer product, sometimes contains warning information pertaining to the ingestion hazard, even when the product packaging does not include such warnings.

As explained in sections V and VI of this preamble, the proposed rule would require standardized warning statements across packaging for button cell and coin batteries, and the packaging for consumer products that contain such batteries.

III. Incident Data and Hazard Patterns

Medical literature, CPSC data, and data from the National Capital Poison Center (NCPC) describe the deaths and serious injuries associated with the ingestion or insertion of button cell or coin batteries, including choking, internal chemical burns, chemical leakage, pressure necrosis (tissue damage), and the creation of hazardous chemicals (such as sodium hydroxide and hydrochloric acid) and related hazards. Tab A of Staff's NPR Briefing Package describes in more detail the incident data from the National Electronic Injury Surveillance System (NEISS) and from the Consumer Product Safety Risk Management System (CPSRMS). Staff also reviewed reports of deaths and injuries from NCPC data, as described in Tab B of Staff's NPR Briefing Package.

A. Fatalities

The NCPC, or Poison.org, has tracked button cell or coin battery ingestions occurring from 1977 to the present. *See* Tab B of Staff's NPR Briefing Package. From 1977 to June 2022, the NCPC reported 69 deaths due to ingestion of button cell or coin batteries.[7] In the 47 cases where battery chemistry was known, 44 involved lithium batteries, two involved manganese dioxide chemistry, and one involved an alkaline button battery. The sources of these batteries, where known, were a remote control (8), toy (4), watch (2), camera (2), movie camera, camera flash, garage door opener, electric candle, remote car alarm, torch, tea light (spare battery), 3D TV glasses, key fob, and loose (battery fed to child by older brother). The button cell or coin battery size, where known, ranged from 10 mm to 25 mm (0.4 in. to 1 in.). The symptoms presented resembled those of a cold or upper respiratory infection and were often misdiagnosed as an infection or croup, or missed all together. In some cases, the first symptom was vomiting blood or blood coming from the nose, followed by death. Two deaths were caused by sepsis[8] after removal of the battery. Fifty of the 69 deaths in the NCPC data set were due to the battery burning through the esophagus and creating a hole to adjoining tissues, such as the trachea or arteries.

The Commission is also aware of 25 fatalities from button cell or coin battery ingestions reported nationally in the CPSRMS data from January 1, 2011 to December 31, 2021.[9] *See* Tab A of Staff's NPR Briefing Package. CPSC staff determined the source of the button cell or coin battery in seven of these fatalities: two from remote controls, two from a tracking device, one from a toy, one from the battery packaging, and one loose battery. The mechanisms of death represented in these fatalities are consistent with those seen in the medical literature and from the NCPC data.

B. Nonfatal Incidents

From 1982 to June 2022, NCPC reported 267 cases of severe injury from button cell or coin battery ingestion.[10] Nine injuries were from manganese dioxide batteries, two were from mercuric oxide, two were from alkaline, one was from silver oxide, and 182 were from lithium batteries. Sources of the batteries, where known, were remote controls (26), toys (13), cameras (7), watches (7), scales (7), key fobs (7), calculators (5), battery packages (3), digital ear thermometers (2), flashlights (2), handheld computer games (2), soles of shoes (2), portable CD player, hair dryer, ab belt (exerciser), personal digital organizer, talking book, bicycle computer, computer, singing card, loose, guitar tuner, night light, baby monitor, lighted tweezers, book light, video camera, keychain, 3D TV glasses, portable speaker, lighted ring, and glucometer. Where battery size was known, most of the batteries were 20 mm in diameter, and the battery size range was from 11.6 mm to 24.6 mm (0.46 in. to 0.97 in.). In many cases, impaction of the button battery in the esophagus led to damage due to burning of the esophagus.

Based on incident information in NEISS, CPSC staff estimates that from January 1, 2011, through December 31, 2021, 54,300 emergency department-treated incidents involved button cell or coin battery ingestion or insertion into the mouth, nose, or ear. This excludes cases establishing ingestion of a battery in which the type of battery is not indicated. Staff's estimate generally relied upon the final diagnosis conclusion as recorded in short summaries from medical professionals. The lack of detection of a battery as a foreign body does not necessarily contraindicate battery presence (which may sometimes be missed by x-ray scans). Consequently, these estimates likely underestimate the actual number of button cell or coin battery ingestions or insertions. Table 1 summarizes the number of cases estimated per year.

[7] Fatal Cases (*poison.org*) Fatal Button Battery Ingestions: 69 Reported Cases (accessed June 2022).

[8] An infection of the blood stream resulting in a cluster of symptoms, such as drop in blood pressure, increase in heart rate, and fever.

[9] Incidents reported via CPSRMS as of May 2022. CPSC expects additional reporting of CPSRMS incidents for the most recent years 2020–2021, due to a time lag in reporting to CPSC. The reported incidents may be included in the NCPC data.

[10] Severe Cases (poison.org) Nonfatal Button Battery Ingestions with Severe Esophageal or Airway Injury: 267 Cases. (Accessed June 2022).

TABLE 1—ESTIMATED NUMBER OF BUTTON CELL OR COIN BATTERY INGESTIONS, INSERTIONS, OR IMPACTIONS TREATED IN HOSPITAL EMERGENCY DEPARTMENTS, 2011–2021

Year	Estimate	N	CV
2011	4,600	170	0.20
2012	4,500	179	0.18
2013	5,000	178	0.21
2014	5,500	177	0.19
2015	3,500	163	0.15
2016	6,500	237	0.15
2017	5,400	196	0.20
2018	4,500	200	0.17
2019	4,200	178	0.26
2020	5,500	270	0.14
2021	5,200	235	0.18
Total	54,300	2,183	0.15

Source: NEISS, CPSC.
Summations of estimates may not add to the total estimates provided in the tables, due to rounding. Staff derived estimates from data in the NEISS sample, with number of observations (N) and coefficient of variation (CV) provided. Estimates spanning periods of multiple years (such as the 11 years from 2011 to 2021) are total estimates, not annual averages.

Staff estimates that of the 54,300 cases that were indicated to involve a button cell or coin battery, approximately 88 percent involved ingestion through the mouth, while the remainder arose from insertion into the ear or nose. An estimated 8,800 (16% of 54,300) people were hospitalized as a result of these incidents, while an estimated 44,500 (82% of 54,300) people were treated and released.

Table 2 provides estimates of victim age at the time of initial treatment associated with button cell or coin battery incidents. Staff estimates that 16,100 (30%) of the 54,300 incidents involved young children under the age of 2 years, and an estimated 26,900 (50%) involved children between the ages of 2 and 6. In total, an estimated 43,000 (79%) of the incidents were associated with children 6 years of age or younger—the age group that is the focus of Reese's Law. *See* 15 U.S.C. 2056e(a)(1). Ingestions by adults and elders can be related to confusing loose button cell or coin batteries with medication and ingesting batteries, believing mistakenly that they are pills.

TABLE 2—ESTIMATED NUMBER OF BUTTON CELL OR COIN BATTERY INGESTION OR INSERTION INCIDENTS BY VICTIM AGE (OR AGE RANGE), 2011–2021

Victim age (or age range)	Estimate	Estimated percent	N	CV
0–11 months	2,900	5	129	0.27
12–23 months	13,200	24	513	0.21
2 years	8,700	16	378	0.19
3 years	7,100	13	315	0.19
4 years	5,500	10	220	0.12
5 years	3,200	6	146	0.17
6 years	2,400	4	84	0.18
7 years	1,900	4	71	0.20
8 years	1,500	3	59	0.24
9 to 14 years	2,900	5	141	0.16
15–24 years	(*)	2	33	(*)
25–34 years	(*)	1	8	(*)
35–44 years	(*)	<1	5	(*)
45–54 years	(*)	<1	1	(*)
55–64 years	(*)	<1	6	(*)
65–74 years	(*)	1	17	(*)
75–84 years	(*)	2	21	(*)
85+ years	1,500	3	36	0.22
Total	54,300	100	2,183	0.15

Source: NEISS, CPSC.
* This estimate does not meet NEISS reporting criteria. For a NEISS estimate to satisfy all reporting criteria, the coefficient of variation (CV) cannot exceed 0.33, there must be at least 20 sample cases (N), and there must be at least 1,200 estimated injuries.

Table 3 shows 11,900 (22% of 54,300) incidents where the button cell or coin battery was known to have come from a product. Staff estimates that at least 5,300 batteries (45% of 11,900) were obtained from a ''Non-Toy Consumer Product'' (*i.e.,* in scope of Reese's Law). Such products included lights (*i.e.,* flashlights, pen lights), remote controls, watches, calculators, decorations and ornaments, electronic candles and tea lights, clocks and timers, electronic sound making books, pens, guitar tuners, and other consumer products. Staff estimates that 4,400 incidents (37%) classified as ''toys/games'' include children's toys and games that fall within the toy standard and are

outside the scope of this proposed rule. An estimated 18 percent of the 11,900 product-related incidents are associated with medical devices, which are outside the scope of the rulemaking for child-resistant battery compartments, including hearing aids (13%) and other medical devices (5%).

TABLE 3—ESTIMATED NUMBER OF BUTTON CELL OR COIN BATTERY INCIDENTS WHERE OBTAINED FROM A PRODUCT BY BATTERY SOURCE AND PRODUCT TYPE, 2011–2021

Battery source product type	Estimate	Estimated percent	N	CV
Consumer Product (excluding Toys/Games and Key Fobs)	5,300	42	237	0.17
Toys/games	4,400	37	176	0.17
Car remotes and key fobs	(*)	2	11	(*)
Hearing aid	1,600	13	52	0.21
Other Medical Device (excluding hearing aids)	(*)	5	16	(*)
Unknown Product Type**	(*)	<1	4	(*)
Total	11,900	100	496	0.14

Source: NEISS, CPSC.
* This estimate does not meet NEISS reporting criteria.
** For a small proportion of cases, although it could be determined that the batteries were neither loose nor from packaging and came from *some* product or device, it could not be determined which *type* of product or device.

In the CPSRMS data, staff identified 87 nonfatal incidents involving button cell or coin battery ingestion (*i.e.,* ''Ingestion'' incidents) or unintended access to the button cell or coin battery with no ingestion (*i.e.,* ''Battery Access'' incidents) from January 1, 2016, through December 31, 2021. *See* Staff's NPR Briefing Package, p. 13. Table 4 provides a summary of the 74 nonfatal incidents that involved a product, rather than battery packaging, as the source of access to the battery.

TABLE 4—REPORTED NUMBER OF PRODUCT CLASSIFIED NONFATAL INCIDENTS BY INCIDENT CLASSIFICATION AND BATTERY SOURCE PRODUCT TYPE, 2016–2021

Battery source product type	Incident classification		Combined nonfatal	
	Ingestion	Battery access	Total	Total percent
Non-toy Consumer Product	13	16	29	42
Toys/games	20	23	43	56
Medical Device	1	1	2	3
Total	34	40	74	100

Source: CPSRMS, CPSC.

A high proportion of button cell and coin battery incidents reportedly involved toys and games. Based on products in the CPSRMS database where the exact product is known, many of the toys are subject to the requirements of the mandatory toy standard, codified in 16 CFR part 1250, which requires toy products to meet the battery accessibility requirements in the voluntary standard for toys, ASTM F963–17.[11] CPSC staff has raised a concern with ASTM that ASTM F963–17's requirements for battery compartments do not adequately protect against the liberation of button cell or coin batteries from toys and becoming an ingestion hazard.[12]

C. Hazard/Injuries Associated With Button Cell or Coin Batteries

As set forth in detail in Tab B of Staff's NPR Briefing Package, CPSC staff reviewed medical literature related to battery-ingestion injuries, CPSC data, and data from Poison.org, and found that ingested batteries, particularly button cell or coin batteries, can lodge in the esophagus and cause severe tissue damage after only a few hours. The conductive soft tissue in the digestive tract can form a circuit between the battery terminals, creating an electric current. When lodged in the esophagus, button cell or coin batteries can lead to a burn in the esophagus, perforations, and burning of nearby tissue. Generation of hydroxide by the current created as a result of the battery contacting tissue in the digestive tract is the primary pathway to the chemical burn hazard associated with ingestion of lithium coin batteries, particularly, because of their higher voltage and capacity. Other mechanisms of injury associated with button cell or coin batteries include leakage of alkaline electrolyte from alkaline button cell batteries or pressure necrosis from extended contact of the foreign object with the soft tissue.

In addition to ingestion from swallowing, a proportion of nose insertions ultimately results in ingestion or aspiration, with batteries getting into the digestive tract or airways. Button cell or coin batteries impacted in the nose can lead to severe damage to the endonasal mucous membranes, necrosis (tissue damage) of the nasal septum cartilage, and nasal septum perforation. Tab B, Appendix G of Staff's NPR Briefing Package, provides examples of ear and nose insertion incidents.

[11] Products referred to as ''toys'' in the incident data, that do not fall within the scope of part 1250, would be subject to this rule; thus, the rule will address some unknown portion of products indicated in the incident data as toys or games.

[12] *https://www.cpsc.gov/s3fs-public/8-19-2022-Letter-to-ASTM-Battery-Operated-Toys.pdf?VersionId=PgFoeCeb0BYz0kyg6z87tbwHKv3x9W0y.* Staff Correspondence Relating to Voluntary Standards—Letter to ASTM re: Battery Operated Toys, August 19, 2022.

CPSC staff specifically considered the ingestion hazard presented by zinc-air button cell and coin batteries in consumer products, and found that the risk is low. Staff estimates that at least 9 percent of button cell or coin battery ingestion or insertion incidents involve zinc-air batteries. But zinc-air batteries are primarily used in hearing aids, which are medical devices under the jurisdiction of the FDA. Staff did not identify zinc-air batteries being used in any consumer products. Furthermore, zinc-air batteries are typically much smaller than other button cell or coin batteries, and therefore, they do not present the same risk of choking. Staff did not identify any choking incidents in which zinc-air batteries were the source battery. Moreover, zinc-air batteries use a technology that needs air for the current to flow or voltage to be present on the terminals. Accordingly, if a zinc-air battery is swallowed or inserted into the nose, wet mucosa stops this flow of air and also the voltage, so there are no associated chemical or hydroxide burns. Zinc-air batteries are sealed with a hydrophobic material, so there is also little chance for electrolyte leakage. *See* Tab B of Staff's NPR Briefing Package.

Although hearing aids with zinc-air batteries would not be subject to performance requirements for consumer products (because hearing aids are medical devices), zinc-air batteries can be consumer products. Based on staff's assessment of the characteristics of zinc-air batteries and the lack of ingestion injury associated with these batteries, however, the Commission proposes that the labeling requirements of Reese's Law not apply to the packaging for zinc-air button cell or coin batteries. The Commission seeks comment on whether any consumer products contain, or are designed to contain, zinc-air button cell or coin batteries, if so, whether performance standards for battery compartments should apply to these consumer products, and whether the Commission should require ingestion warnings on zinc-air button cell or coin battery packaging.

D. Hazard Patterns

CPSC staff identified the primary ways that children gain access to button cell or coin batteries before ingesting them:

1. *Access to the battery from a product's intact battery compartment.* Seventy-nine out of 112 fatal and nonfatal CPSRMS incident narratives staff identified in Tab A of Staff's NPR Briefing Package refer to products with button cell or coin battery compartments that are potentially easily accessed by children.[13] Ten of the 79 incident narratives refer to batteries in compartments that appeared easy to open or defeat. These batteries did not accidentally come out of a battery compartment, but appeared easily accessible to children while in a compartment.

2. *Obtaining the battery from a battery compartment that broke or failed to contain the battery as intended.* Sixty-nine of the 79 fatal and nonfatal CPSRMS incidents involving products describe the batteries unintentionally coming out of the battery compartment or the product, or the battery compartment opening or breaking, often while a child was interacting with the product. In some cases, the battery was found to have come from a product only after a child was diagnosed with having ingested the battery. Eighteen of these incidents specifically describe products with ineffective screws, including comments about stripped threads, continuous spinning, screws that were ''too short,'' and compartments that popped open, even though there was a screw.

3. *Removing the battery from its packaging, or obtaining a loose battery that was not contained within packaging or a product.* Six out of 112 fatal and nonfatal CPSRMS incident narratives refer to loose batteries or battery-packaging hazards, and staff estimates that at least 7 percent of NEISS incidents involve loose batteries or batteries removed from their packaging.

E. Recalls

Table 5 describes the six CPSC-conducted recalls that occurred between January 1, 2011, and July 31, 2022, involving consumer products containing button cell or coin batteries associated with a battery ingestion hazard. The recalled products were responsible for four reported battery-ingestion incidents and affected approximately 823,900 products (including toys).

TABLE 5—SUMMARY OF RECALLS INVOLVING PRODUCTS WITH BUTTON CELL AND COIN BATTERIES

Recall date	Firm	Hazard	Number of recalled units	Number of incidents & injuries reported	Press release No.
10/10/2016	Target	The gel clings can separate and expose the inner decal and LED/button battery compartment, posing choking and button battery ingestion hazards to children.	About 172,000 units Halloween LED Gel Clings.	No Injuries Reported	17–020
12/16/2016	Figi's Companies Inc	The tin's music sound chip mechanism can separate and expose button batteries, posing choking and button battery ingestion hazards to children.	About 5,000 units "Christmas Wishes" Tins.	No Injuries Reported	17–120
5/23/2017	Hobby Lobby	The battery cover can detach and expose the small coin cell batteries, posing choking and ingestion hazards to young children.	About 43,400 units Easter and July 4th-themed Light-Up Spinner Toys.	Received one report of a 14-month-old child who ingested the battery.	17–166
12/19/2019	Toysmith	The battery cover can detach and expose the button-cell batteries, posing choking and ingestion hazards to young children.	About 58,000 units Light-Up Magic Wands.	One report of a child swallowing one of the batteries removed from the toy. Medical attention was required to remove the battery.	20–045
5/12/2021	K & M International	The coin cell battery inside the slap watches can fall out, posing battery ingestion and choking hazards to young children.	About 463,000 units Wild Republic Slap Watches.	No incidents or injuries have been reported.	21–134

[13] Out of the 79 products included in this hazard pattern analysis, 77 are consumer products, and two are household medical devices (body temperature thermometer and toothbrush).

TABLE 5—SUMMARY OF RECALLS INVOLVING PRODUCTS WITH BUTTON CELL AND COIN BATTERIES—Continued

Recall date	Firm	Hazard	Number of recalled units	Number of incidents & injuries reported	Press release No.
12/1/2021	Halo Brand Solutions	A child can disassemble the projector flashlight and access the button cell batteries, posing ingestion and choking hazards.	About 82,500 units Projector Flashlights..	Received two reports of children accessing the button cell batteries from the flashlight, and in one case, a child required surgery to remove a swallowed battery.	22–024

IV. Assessment of Performance Requirements for Battery Compartments in Relevant Voluntary Standards, and Description of the Proposed Rule's Battery Compartment Requirements

In this section, the Commission describes staff's assessment of existing voluntary standards that establish performance requirements for button cell or coin battery compartments in consumer products, and the elements of those standards that the Commission proposes to adopt as the basis for its proposed rule implementing Reese's Law.

A. Preliminary Determination Regarding Performance Requirements in Existing Voluntary Standards

Section 2(d) of Reese's Law states that the Commission shall not promulgate a final rule for consumer products that contain button cell or coin batteries if the Commission determines, with respect to any consumer product, that a voluntary standard that meets the requirements of section 2(a) of Reese's Law is either in effect at the time of the Commission's determination, or will be in effect not later than 180 days after the enactment of Reese's Law (meaning by February 12, 2023). Accordingly, CPSC staff assessed voluntary standards to determine whether any existing standards meet the requirements of section 2(a)(1) of Reese's Law, which mandates that the rule must include performance requirements for button cell or coin battery compartments on consumer products to secure them in a manner that eliminates or adequately reduces the risk of injury from the ingestion of button cell or coin batteries by children who are 6 years old or younger during reasonably foreseeable use or misuse of the product. 15 U.S.C. 2056e(a)(1).

Tab D of Staff's NPR Briefing Package contains a detailed review of six voluntary standards that relate to the accessibility of button cell or coin batteries. Four of these six standards most directly address the hazards associated with button cell and coin battery accessibility in consumer products, as required by Reese's Law. These four voluntary standards are:

- UL 4200A, *Standard for Safety for Products Incorporating Button or Coin Cell Batteries of Lithium Technologies* (UL 4200A);
- ASTM F963, *Standard Consumer Safety Specification for Toy Safety;*
- IEC 62368–1, *Audio/video, information and communication technology equipment-Part 1: Safety requirements;* and
- IEC 62115, *International Standard for Electric Toys—Safety.*

Table 6 provides CPSC staff's summary of how each of these standards addresses the battery-ingestion hazard, with requirements that are intended to minimize the risk of children removing button cell or coin batteries from a consumer product.

TABLE 6—SUMMARY OF VOLUNTARY STANDARDS REQUIREMENTS FOR BUTTON CELL OR COIN BATTERY ACCESS IN A CONSUMER PRODUCT

Standard	Scope	Required action(s) to open battery compartment	Abuse testing
UL 4200A	Household-type products that incorporate or may use button cell or coin batteries of lithium technologies.	(1) A tool, such as a screwdriver or coin, is required to open the battery compartment; screw fasteners must be captive; OR (2) The battery compartment door or cover requires the application of a minimum of two independent and simultaneous movements to open by hand.	*Preconditioning:* (1) 7 hours of pre-conditioning in oven at 70 °C (158 °F); (2) Open/close and remove/install battery 10 times. *Abuse Tests:* (1) *Drop test*—maximum 10 times at 3.3 ft in positions likely to produce the maximum force on the battery compartment or enclosure; (2) *Impact test*—3 impacts by steel sphere imparting 2–J of energy; and (3) *Crush test*—74 lbf. over 38 square inches for 10s in positions likely to produce the most adverse results.
ASTM F963	Toys intended for use by children under 14 years of age.	Coin, screwdriver, or other common household tool required to open battery compartment.	(1) *Drop test*—maximum 10 times at 4.5 ft in random orientation; minimum of 4 times at 3 ft in random orientation; (2) *Torque test*—2–4 in-lbs. of torque over 10 seconds; (3) *Tension test*—10–15 lbs. of tension over 10 seconds; (4) *Tension test for pliable materials*—10–15 lbs. of tension over 10 seconds; and (5) *Compression test* —20–30 lbf over 1 square inch for 10 seconds.
IEC 62368–1	Electrical and electronic equipment within the field of audio, video, information and communication technology, and business and office machines with a rated voltage not exceeding 600 V.	(1) A tool, such as a screwdriver or coin, is required to open the battery compartment, screw fasteners must be captive; OR (2) The battery compartment door or cover requires the application of a minimum of two independent and simultaneous movements to open by hand.	*Preconditioning:* (1) 7 hours of pre-conditioning in oven at 70 °C (158 °F); and (2) Open/close and remove/install battery 10 times. *Abuse Tests:* (1) *Drop test*—maximum 10 times at 3.3 ft in positions likely to produce the maximum force on the battery compartment or enclosure; (2) *Impact test*—3 impacts by steel sphere imparting 2–J of energy; and (3) *Crush test*—apply 74 lbf. for 10s in positions likely to produce the most adverse results.

TABLE 6—SUMMARY OF VOLUNTARY STANDARDS REQUIREMENTS FOR BUTTON CELL OR COIN BATTERY ACCESS IN A CONSUMER PRODUCT—Continued

Standard	Scope	Required action(s) to open battery compartment	Abuse testing
IEC 62115	Electric toys being any product designed or intended for use in play by children under 14 years of age.	Batteries that fit wholly within the small parts cylinder shall not be removable without the aid of a tool, screw fastener must be captive.	(1) *Screw test*—Remove/replace screws 10 times with torque applied; (2) *Drop test*—maximum 10 times at 93 cm ± 5 cm (36.6 in.) in random orientation; minimum 4 times at 93 cm ± 5 cm (36.6 in.) in random orientation; (3) *Impact test*—3 impacts by hammer imparting 0.5–J of energy; (4) *Tension test*—70 N ± 2 N (15.7 lbs.) of tension over 10 seconds; and (5) *Tension test*—70 N ± 2 N (15.7 lbs.) tension force on a textile seam over 10 seconds.

The left-hand column in Table 7 displays the categories staff evaluated to assess satisfaction of Reese's Law, and staff's evaluation of whether the standard eliminates or adequately reduces the risk of injury from button cell or coin battery ingestion by children age 6 or under. Specifically, Table 7 includes the scope of the voluntary standard, and whether the scope includes all or only some relevant battery chemistry types that create an ingestion hazard and associated consumer products as seen in the incident data; whether the standard's performance requirements for constructing and securing the battery compartment would eliminate or adequately reduce the risk of injury from access to batteries from consumer products and their ingestion, as seen in the incident data, or inadequately address the risk; and whether the standard addresses use-and-abuse testing at all, and if so, the adequacy of the use-and-abuse testing to eliminate or adequately reduce ingestion incidents as seen in the data.

TABLE 7—ASSESSMENT OF EXISTING VOLUNTARY STANDARDS FOR BUTTON CELL OR COIN BATTERIES

	UL 4200A	ASTM F963	IEC 62368–1	IEC 62115
Scope:				
Battery Chemistry Type	Lithium	Any	Any	Any.
Product Type	Any	Toys	Audio/Visual Equipment.	Electronic Toys.
Construction:				
Opens with Tool	A	A	A	A
Captive screws	I		I	A
Threaded attachment requirements	A		I	
Opens with two independent and simultaneous movements.	I		I	
Accessibility	A	A	A	A
Use and Abuse:				
Pre-conditioning in oven	A		A	
Open/close and remove/install battery/screw(s) 10 times	A		A	I
Drop test—based on product weight/type	I	I	I	I
Drop test—based on age grading		I		
Impact Test	A		I	I
Crush Test (big surface area)	A		I	
Torque Test		A		
Tension Test		A		A
Tension Test—Seams		A		A
Compression Test (little surface area)		A		
Accessibility Probe Compliance Test	I	I	I	A
Securement (non-removable batteries)	A			

Blank—Does not address requirements, I–Inadequately addresses requirements, A—Adequately addresses requirements.

Table 7 summarizes staff's assessment in Tab D of Staff's NPR Briefing Package, displaying an ''I'' where a standard contains a performance requirement that inadequately addresses the risk of ingestion, and an ''A'' if CPSC staff assessed the requirement as adequate to address the risk of ingestion. Table 7 shows that no existing voluntary standard includes within its scope all battery types and all consumer products that contain button cell or coin batteries, as reflected in the incident data. The scope of each voluntary standard staff reviewed is narrower than the scope of the proposed rule, which applies to all non-toy consumer products within the Commission's jurisdiction that contain button cell or coin batteries. For example, UL 4200A only applies to lithium batteries.

Regarding construction of the battery compartments, UL 4200A is the only voluntary standard that contains requirements that would address relevant incidents seen in the data, but in staff's view, not all the requirements are adequate to address the risk of injury. For example, although UL 4200A contains a requirement for a double-action locking mechanism, staff found that the language in UL 4200A could lead to defective double-action locks, which could allow a child to gain access to the battery compartment. Staff also found that requirements in UL 4200A are not always clear and could result in different interpretations by testers,

leading to inconsistent and unreliable testing and, ultimately, risk to children.

Regarding ASTM F963, Table 6 reflects that it requires a tool to open a battery compartment, but does not require captive screws. This means that consumers could undermine the screw requirement by not using them, discarding them, or losing the screws. ASTM F963 also does not have torque requirements for fasteners, nor does it provide requirements for fastener threading or retention. These omissions are a deficiency, given the incident data involving lost screws and stripped screw holes. Staff concluded that the IEC standards contain similar deficiencies related to battery compartment fasteners, as summarized in Tables 6 and 7.

As part of its requirements for secure battery compartments, Reese's Law requires a performance standard for consumer products addressing reasonably foreseeable use-and-misuse conditions. Accordingly, staff considered the adequacy of use-and-abuse testing of consumer products for each voluntary standard, and staff assessed whether the use-and-abuse testing would eliminate or adequately address deaths and injuries in the incident data. As shown in Table 7, and as described in more detail in Tab D of Staff's NPR Briefing Package, staff advises that none of the voluntary standards, alone, provides for all the use-and-abuse testing needed to eliminate or adequately reduce incidents seen in the data.

Based on CPSC staff's review and analysis of voluntary standards related to child-resistant battery compartments for consumer products that contain button cell or coin batteries, as set forth in Tables 6 and 7 above, and Tab D of Staff's NPR Briefing Package, the Commission preliminarily determines that no existing voluntary standard contains performance requirements that would eliminate or adequately reduce the risk of button cell or coin battery ingestion associated with consumer products that contain button cell or coin batteries within the scope of the proposed rule. However, as set forth below, the Commission draws on elements of these four voluntary standards to propose a rule that meets the requirements of Reese's Law. We seek comment from the public regarding staff's assessment of the relevant voluntary standards, and on our preliminary conclusion that, for the reasons given by staff, none of the standards, alone, satisfy the requirements for adoption as a consumer product safety rule under section 2(d) of Reese's Law, 15 U.S.C. 2056e(d).

B. Elements of the Proposed Standards for Battery Compartment Accessibility in Products Incorporating Button Cell or Coin Batteries

Tables 8 and 9 summarize the performance requirements in the proposed rule.

TABLE 8—REQUIREMENTS FOR CONSUMER PRODUCTS WITH COMPARTMENTS FOR REPLACEABLE BATTERIES

Button cell or coin batteries must not become accessible or liberated when tested to these requirements:	
Construction Requirements	
Battery Compartment Construction Options.	*Option 1*: Coin, screwdriver, or other household tool. • Captive screws • Two threads engaged or minimum torque + spin angle. *Option 2:* Two independent & simultaneous hand movements. • Cannot be combinable to a single movement with a finger or digit.
Accessibility Test	Open or remove any part of the compartment not meeting Option 1 or Option 2 Apply Tension Test for Seams from 16 CFR part 1250 on pliable materials, using a force of 70.0 N (15.7 lbf). Determine whether Test Probe 11 from IEC 61032 can touch the battery.
Preconditioning Requirements	
Preconditioning in Oven	Thermoplastics—7 hours at 158 °F or greater, based on operational temperature.
Simulated Battery Replacement.	Open/Close and remove/install battery 10 times.
Use and Abuse Tests	
Drop Test	10 drops from 1 m (39.4 in) on hardwood, in positions likely to produce maximum force.
Impact Test	3 impacts on battery compartment with steel sphere, 2 J (1.5 ft-lbf) of energy.
Crush Test	335 N (75.3 lbf) for 10 s, using 100 by 250 mm (3.9 by 9.8 in) flat surface.
Compression Test	Test from 16 CFR Part 1250, using a force of 136 N (30.6 lbf).
Torque Test	Test from 16 CFR part 1250, using a torque of 0.50 Nm (4.4 in.-lbf).
Tension Test	Test from 16 CFR part 1250, using a force of 72.0 N (16.2 lbf).
Probe for Accessibility	Apply 50 N (11.2 lbf) with Test Probe 11 from IEC 61032 to confirm compliance.

TABLE 9—REQUIREMENTS FOR CONSUMER PRODUCTS WITH COMPARTMENTS FOR NON-REPLACEABLE BATTERIES

Option 1—Not Accessible	Meets the same requirements as battery compartment for replaceable batteries.
Option 2—Accessible	• Secured with soldering, fasteners such as rivets, or equivalent means. • Applicable preconditioning requirements apply. • Confirmed with secureness test: test hook applies a force of 22 N (4.9 lbf) directed outwards for 10 s, at all possible points. Battery cannot liberate from the product.

Below we describe the rationale for the proposed requirements.

1. Construction: Actions to Open the Battery Compartment

Each of the four voluntary standards specifies similar requirements for a locking mechanism to secure the battery compartment that requires a tool (or coin) to open, to reduce the possibility of children removing the battery. Generally, requiring a coin or tool to open a battery compartment addresses child access to the battery compartment, because younger children may lack the required cognitive ability and fine motor coordination to perform the necessary actions to access the battery compartment, as discussed in Tab C of Staff's NPR Briefing Package. UL 4200A, however, is the only voluntary standard that includes requirements for this locking mechanism, specifying either a minimum torque of 0.5 Nm (4.4 in-lbf) and a minimum angle of rotation of 90 degrees for the battery compartment fastener mechanism, or a minimum of two full threads engaged. These requirements are important to secure the battery compartment because staff found incidents involving battery compartments with stripped screw holes or screws of insufficient length, defeating the integrity of the screw requirement and allowing child access. In particular, ASTM F963 does not contain these torque and rotation requirements for the locking mechanism, and staff identified incidents of children accessing battery compartments on toys that purportedly met ASTM F963. Accordingly, the Commission proposes to include requirements for the locking mechanism, consistent with the requirements in UL 4200A.

Moreover, all of the assessed voluntary standards, except ASTM F963–17, include a requirement for captive screws, which are screws that remain in the compartment or cover when unscrewed. If the screw is not captive to the compartment door, consumers can more easily lose the screw or defeat this locking mechanism by removing the screw, potentially for convenience, without appreciating the safety purpose of the screw.

The Commission preliminarily concludes that the requirements in UL 4200A related to products that use a tool or coin to open the battery compartment, when applied to the full scope of products subject to Reese's Law, and not just to lithium coin batteries, are adequate to address the battery compartment construction requirements related to the button cell or coin battery ingestion hazard. Although UL 4200A includes an exception to the captive screw requirement for large panel doors, the Commission is not including such an exception in the proposed rule. Instead, we are requesting comment on this, including what constitutes a ''large panel door,'' the types of products intended for this exception, and why these doors would not present the same risk of injury as any other consumer product that contains button cell or coin batteries if the screws become lost or discarded by the consumer.

UL 4200A and IEC 62368–1 also specify an option for the battery compartment door to require a double-action locking mechanism (requiring at least two independent and simultaneous movements to open the compartment by hand) that ASTM F963 does not contain. Unlike screws, a double-action locking mechanism does not rely on the consumer to keep and reuse a screw. Thus, a double-action lock, if well-designed and constructed, can be more secure than a screw lock that relies on consumers to reuse the screw each time the battery compartment is closed. The Commission preliminarily concludes that double-action locking mechanisms that meet the requirements of the proposed rule, which are similar to the double-action lock provisions in UL 4200A, could be effective in preventing younger children from opening the battery compartment, while affording additional flexibility to design effective child-resistant battery enclosures.

2. Use and Abuse Testing

Reese's Law mandates that the rule must include performance requirements for button cell or coin battery compartments during reasonably foreseeable use or misuse of the product. Accordingly, staff evaluated use and abuse testing in each voluntary standard to address the actual hazard patterns that are apparent in the incident data. Although all of the voluntary standards reviewed by staff specify abuse tests, none of the voluntary standards, alone, would eliminate or adequately reduce the ingestion risks presented by the incident data. Based on staff's incident review, engineering analysis, and testing of consumer products as described in Tab D of Staff's NPR Briefing Package, staff assessed that the drop test and impact test in UL 4200A adequately simulate use and abuse of consumer products by children. Staff assessed that the use and abuse testing in ASTM F963–17 is inadequate, alone, to address the risk of injury, because it does not precondition the products before abuse testing and does not contain an impact test, which is the test staff found most likely to simulate foreseeable use and abuse of consumer products.

Staff, however, also assessed that the compression tests, torque tests, and tension tests in ASTM F963–17, the toy standard, are adequate to simulate foreseeable interactions, such as when a child grasps a part of a product with fingers or teeth, and twists, pulls, or presses on part of the product, while UL 4200A and IEC 62368–1 do not contain performance requirements to address these risks. A detailed assessment of these test methods can be found in Tab D of Staff's NPR Briefing Package. Staff specifically observed the following regarding abuse testing:

- UL 4200A specifies heat pre-conditioning of plastic component parts of the product. Staff's testing demonstrated that heat pre-conditioning of the consumer products stresses plastic components to simulate more realistically, the expected condition of the product during normal use. ASTM F963 and IEC 62115 do not require heat pre-conditioning, and therefore, are inadequate to assess consistently and reliably, the integrity of battery compartments through use-and-abuse testing.
- UL 4200A specifies mechanical pre-conditioning of the product by requiring a battery compartment on a consumer product to be opened, the battery removed, the battery reinstalled, and then the compartment closed, a total of 10 times. As with heat pre-conditioning, staff's testing confirmed that mechanical pre-conditioning assesses more consistently the durability of a battery compartment to maintain its integrity over time, by preventing, for example, stripping of threads, compared to standards that do not require pre-conditioning. ASTM F963 and IEC 62115 do not require pre-conditioning by opening and closing the battery compartment, and therefore, inadequate to test reliably the durability of battery compartments on consumer products during foreseeable use and misuse.
- UL 4200A subjects ''portable'' products to three drops during abuse testing, while ''hand-held'' portable products are subjected to 10 drops. All drops are from a height of 3.3 feet in positions likely to produce the maximum force on the battery compartment. Staff assessed that the 10-cycle drop test for handheld items in UL 4200A is adequate to address and prevent incidents of breaking consumer products or battery compartments. The abuse testing requirements in ASTM F963 and IEC 62115, however, are inadequate to address the risk of button cell or coin batteries being liberated

from broken battery compartments, because they allow for as few as four drops from a height of 3 feet, in random orientations that may not exert maximum force on the battery compartment.

• UL 4200A requires three impact tests that each impart two joules of energy directly on the battery compartment with a steel ball. Staff advises that this impact test reasonably indicates the durability of the battery compartment during foreseeable use and misuse, as required by Reese's Law. However, ASTM F963 is inadequate to eliminate or adequately reduce access to batteries caused by foreseeable stress on the battery compartment, because the standard does not require impact tests directly on the compartment. IEC 62368–1 varies the required impact energy based on the type of product, and IEC 62115 requires less energy per impact, which does not adequately reduce access to the battery compartment for certain products.

• ASTM F963 specifies torque test and tension test methods to simulate interactions during reasonably foreseeable use and misuse conditions, such as a child grasping a part of the product with fingers or teeth and twisting, pulling, or pressing on the product. Staff advises that these requirements in the toy standard are adequate to test the durability and integrity of battery compartments in products with pliable materials such as shirts and greeting cards that light up or make sound using batteries. The proposed rule includes torque and tension tests to eliminate or adequately reduce the risk of ingestion in pliable products, as required by Reese's Law.

• UL 4200A specifies a compression test of 74.2 pounds over a 3.9-inch x 9.8-inch area, which staff assesses adequately addresses a child pushing on the product with hands or feet. ASTM F963 and IEC 62115 specify a concentrated compression load of 30 pounds over a 1-square-inch area, which staff assesses adequately addresses a child unintentionally opening a battery compartment that cannot be impacted directly during the drop test, but that can be pushed open with hands or fingers. However, staff advises that the smaller compression test area in ASTM F963 and IEC 62115 is inadequate to assess a child pushing on the product with hands or feet. Conversely, the larger compression area of the UL 4200A is inadequate to address the risk of injury associated with a child pushing on the product with fingers. Accordingly, the proposed rule includes both tests to address adequately the foreseeable possible range of child interactions and incidents.

• UL 4200A specifies that if a product has a battery that is not intended to be removed or replaced by the user, and that is held fully captive by soldering, fasteners, or any equivalent means, then the product is not subject to abuse testing, and is subject only to pre-conditioning tests and secureness testing using a test hook and a force of 4.5 lb. IEC 62368–1 also excludes from abuse testing any products with non-removable batteries; but it does not require any secureness test. The Commission is aware of incidents involving children gaining access to non-removable batteries in products like computers. Although the proposed rule requires only the applicable pre-conditioning tests and the secureness test based on UL 4200A for non-removable batteries, with no additional abuse testing, the Commission requests comment on whether the proposed secureness test based on UL 4200A is sufficient to address reasonably foreseeable use and abuse of consumer products containing non-removable batteries.

3. Accessibility Test

Each of these four voluntary standards relies on a test probe based on a child's finger to verify whether certain components are accessible to children. Staff advises that the test probe used in ASTM F963 is inadequate to test accessibility, because the probe articulates and therefore cannot be used to apply much force. IEC 62368–1, IEC 62115, and UL 4200A do require a force to be applied with their respective probes to verify compliance with the standard. The IEC 62368–1 test probe head has a 3.5 mm (0.14 in.) radius, and compliance is verified with a force of 30 N ± 1 N (6.7 lbf ± 0.2 lbf). IEC 62115 and UL 4200A use Test Probe 11 of the Standard for Protection of Persons and Equipment by Enclosures—Probes for Verification, IEC 61032. This test probe has a head with a 4 mm (0.16 in.) radius. Staff assesses that using test Probe 11 with a force of 50 newtons (11.2 lbf), per IEC 62115, is adequate to assess a child's ability to get into a battery compartment. The Commission seeks comments on the adequacy of the probes and accessibility tests in these voluntary standards.

V. Assessment of Warning Label Requirements in Relevant Voluntary Standards, and Description of the Proposed Rule's Warning Label Requirements

Section 2(a)(2) of Reese's Law mandates warning label requirements for:

• The packaging of button cell or coin batteries (15 U.S.C. 2056e(a)(2)(A));

• The packaging of consumer products containing button cell or coin batteries (15 U.S.C. 2056e(a)(2)(A));

• Any literature, such as a user manual, that accompanies a consumer product containing button cell or coin batteries (15 U.S.C. 2056e(a)(2)(B));

• As practicable, a consumer product that contains button cell or coin batteries in a manner visible to the consumer upon installation or replacement of the button cell or coin battery (15 U.S.C. 2056e(a)(2)(C)(i)); and

• As practicable, a product for which the battery is not intended to be replaced or installed by the consumer, in a manner that is visible to the consumer upon access to the battery compartment; if it is impracticable to label the product, this information shall be placed on the packaging or instructions (15 U.S.C. 2056e(a)(2)(C)(ii)).

The warning labels required by section 2(a) of Reese's Law must (1) clearly identify the hazard of ingestion, and (2) instruct consumers, as practicable, to keep new and used batteries out of the reach of children, to seek immediate medical attention if a battery is ingested, and to follow any other consensus medical advice. 15 U.S.C. 2056e(b).

Tab C of Staff's NPR Briefing Package reviews and assesses warning label requirements in existing voluntary standards, and provides recommendations for warnings with a detailed rationale for each recommended requirement. This section discusses and proposes to adopt staff's recommended implementation of Reese's Law's warning label requirements.

A. Adequacy of Existing Voluntary Standards

To fulfill the requirement in section 2(d) of Reese's Law, the Commission first considers whether the labeling requirements in an existing voluntary standard meet the requirements of section 2(a)(2) and 2(b) of Reese's Law. Tab C of Staff's NPR Briefing Package and its Appendix contain a detailed analysis of the warning label requirements in 10 voluntary standards associated with button cell or coin

batteries. For each standard, staff considered the scope, placement, format, and content of the required labels, and whether it adequately addresses the ingestion hazard warnings required by Reese's Law. Table 10 summarizes staff's assessment of the voluntary standards relevant to labeling of consumer products that contain button cell or coin batteries.

TABLE 10—SUMMARY OF STAFF'S ASSESSMENT OF LABELING REQUIREMENTS IN STANDARDS FOR CONSUMER PRODUCTS CONTAINING BUTTON CELL OR COIN BATTERIES

	ASTM F963	UL 4200A	ASTM F2999–19	ASTM F2923–20	IEC 62115
Scope:					
Battery Chemistry Type	All	Lithium	All	All	All.
Product Type	Toys	All	Jewelry	Children's Jewelry.	Toys.
Labeling:					
On Consumer Product Packaging	I				I
In instructions or accompanying literature	I	I			I
On consumer product		I			

Blank—Does not address requirements, I—Inadequately addresses requirements, A—Adequately addresses requirements.

Table 11 summarizes staff's assessment of the voluntary standards relevant to labeling of packaging for button cell or coin batteries.

TABLE 11—SUMMARY OF STAFF'S ASSESSMENT OF LABELING REQUIREMENTS IN STANDARDS FOR BATTERIES

	ANSI C18.1M	ANSI C18.3M	UL 1642	IEC 60086–4	IEC 60086–5
Scope:					
Battery Chemistry Type	Aqueous	Lithium	Lithium	Lithium	Aqueous.
Labeling:					
On batteries *	I	I		I	I
On battery packaging	I	I	I	I	I
In instructions or accompanying literature		I			

Blank—Does not address requirements, I—Inadequately addresses requirements, A—Adequately addresses requirements.
* Not directly addressed by Reese's Law.

As reflected in Table 10 and explained more fully in Tab C of Staff's NPR Briefing Package and its Appendix, none of the voluntary standards relevant to consumer products that contain button cell or coin batteries have a scope that includes all consumer products. For example, the warnings required in ASTM F963 are limited to toys, and they also do not address spare batteries included with a consumer product. For UL 4200A, the required warnings do not use ANSI formatting and do not clearly warn of an ingestion hazard; this standard requires warning of a ''chemical burn'' without informing consumers how this hazard can occur. IEC 62115 permits a ''Contains coin battery'' symbol on the product packaging, but it does not instruct consumers to ''Keep out of reach of children'' on the packaging, instructions, or product. ASTM F2999–19 and ASTM F2923–20, for jewelry, do not satisfy any of the labeling requirements of Reese's Law.

Table 11 summarizes staff's assessment that the voluntary standards' labeling requirements for battery packaging, likewise, do not satisfy Reese's Law. As reflected in Table 11 and explained more fully in Tab C of Staff's NPR briefing package and its Appendix, none of the voluntary standards relevant to button cell or coin batteries have a scope that includes all button cell or coin batteries for which the ingestion hazard applies. Warnings in ANSI C18.1M and IEC 60086–5 are limited to aqueous battery chemistries (including alkaline batteries), while ANSI C18.3M, UL 1642, and IEC 60086–4 are limited to lithium battery chemistries. Each of the relevant standards addresses warnings on battery packaging, but do not contain requirements specifically addressing the contents in Reese's Law. For example, ANSI C18.3M contains two statements relevant to the ingestion hazard: ''Keep batteries out of the reach of children, especially those batteries fitting within the limits of the truncated cylinder,'' in section 8.4; and ''Immediately seek medical attention if a cell or battery has been swallowed. Also, contact your local poison control center,'' in section 8.5. However, the section containing these two statements provides manufacturers with information regarding safe use of lithium batteries, and does not require the statements to be placed on packaging. Additional warning statements similar to those in section 8.4 and section 8.5 can be found in Annex C, but are only required for lithium coin cells 16 mm in diameter and larger.

Based on CPSC staff's review and analysis of voluntary standards and for the reasons summarized above, the Commission determines preliminarily that no existing voluntary standard contains the warnings required by Reese's Law, for either consumer products containing button cell or coin batteries, or the packaging of such batteries. Although no standard, alone, contains labeling requirements that are adequate to satisfy Reese's Law section 2, the standards collectively contain elements that can be combined to establish succinct warnings that address the ingestion hazard associated with button cell or coin batteries. Accordingly, as discussed below, the labeling requirements in the proposed rule are based on elements of several voluntary standards.

B. Formatting Requirements for Warning Labels

The warning labels in the proposed rule follow requirements found in ANSI Z535.4, American National Standard Product Safety Signs and Labels, which is the primary voluntary consensus standard providing guidelines for the design of safety signs and labels for application to consumer products. The ANSI Z535.4 standard includes recommendations for the design, application, use, and placement of warning labels, such as including the signal word, ''WARNING,'' and the safety alert symbol of an equilateral triangle surrounding an exclamation mark. The following format requirements, drawn from this ANSI standard, apply to all warning labels in the NPR:

1. All warnings must be clearly visible, prominent, legible, and permanently marked.

2. Warnings must be in contrasting color to the background onto which they are printed.

3. Warnings must be in English.

4. The safety alert symbol, an exclamation mark in a triangle, when used with the signal word, must precede the signal word. The base of the safety alert symbol must be on the same horizontal line as the base of the letters of the signal word. The height of the safety alert symbol must equal or exceed the signal word letter height.

5. The signal word ''WARNING'' must be in black letters on an orange background. The signal word must appear in sans serif letters in upper case only.

6. Certain text in the message panel must be in bold and in capital letters, as shown in the example warning labels, to get the attention of the reader.

7. For labels that are provided on a sticker, hangtag, instructions, or manual, the safety alert symbol and the signal word ''WARNING'' must be at least 0.2 in. (5 mm) high. The remainder of the text must be in characters whose upper case must be at least 0.1in. (2.5 mm), except where otherwise specified.

8. For labels that are required to be on the packaging of button cell and coin batteries, on the packaging of consumer products containing such batteries, and directly on consumer products, text size must be dependent on the area of the principal display panel. Text size must be determined based on Table 12, which is based on the information found in 16 CFR 1500.19(d)(7).

TABLE 12—LETTER SIZE FOR WARNING LABELS: INFORMATION BASED ON 16 CFR 1500.19(d)(7)

Letter size measurements in inches								
Display Area: Inches [2]	0–2	+2–5	+5–10	+10–15	+15–30	+30–100	+100–400	+400
Signal word (WARNING)	3/64	1/16	3/32	7/64	1/8	5/32	1/4	1/2
Statement of Hazard	3/64	3/64	1/16	3/32	3/32	7/64	5/32	1/4
Other Text	1/32	3/64	1/16	1/16	5/64	3/32	7/64	5/32
Letter size measurements in cm (for reference only)								
Display Area: cm [2]	0–13	+13–32	+32–65	+65–97	+97–194	+194–645	+645–2,581	+2,581
Signal word (WARNING)	0.119	0.159	0.238	0.278	0.318	0.397	0.635	1.270
Statement of Hazard	0.119	0.119	0.159	0.238	0.238	0.278	0.397	0.635
Other Text	0.079	0.119	0.159	0.159	0.198	0.238	0.278	0.397

Placement of labels on packaging of button cell or coin batteries, consumer product packaging, and on consumer products, as set forth in the proposed rule, rely on the following definitions:

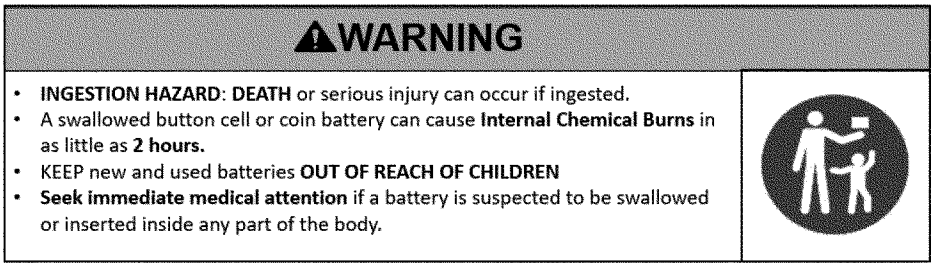
- The ''principal display panel'' is defined as the display panel for a retail package of button cell or coin batteries or retail package of a consumer product containing such batteries that is most likely to be displayed, shown, presented, or examined under normal or customary conditions of display for retail sale. The principal display panel is typically the front of the package.
- The ''secondary display panel'' means a display panel for a retail package of a button cell or coin batteries or retail package of a consumer product containing such batteries that is opposite or next to the principal display panel. The secondary display panel is typically the rear or side panels of the package.
- The ''product display panel'' means the surface area on, near, or in the battery compartment. For consumer products with replaceable button cell or coin batteries, the product display panel must be visible while a consumer installs or replaces the button cell or coin battery. For consumer products with nonreplaceable button cell or coin batteries, the product display panel must be visible upon access to the battery compartment.

C. Required Warnings for Button Cell or Coin Battery Packaging

Using the foregoing formatting requirements, the proposed rule requires a warning for the principal display panel of the battery packaging, shown in Figure 4, that meets the requirements in section 2 of Reese's Law.

BILLING CODE 6355–01–P

Figure 4. Warning of Ingestion Hazard for Battery Packaging.



Accordingly, battery packaging must include the following warnings statements:

• ''INGESTION HAZARD: DEATH or serious injury can occur if ingested.'' This sentence identifies the hazard of ingestion, as required by section 2(b)(1) of Reese's Law.

• ''A swallowed button cell or coin battery can cause Internal Chemical Burns in as little as 2 hours.'' This sentence provides warning label requirements, as stated in Reese's Law; an effective warning should have an explanation of how and why ingestion of a button cell or coin battery is hazardous.

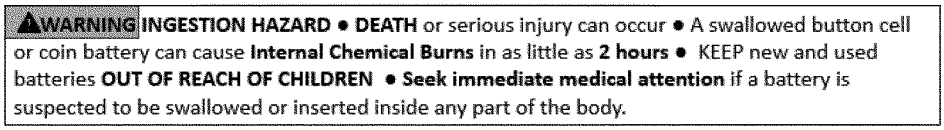
• ''KEEP new and used batteries OUT OF REACH OF CHILDREN.'' This sentence implements language in section 2(b)(2) of Reese's Law. In addition, use of the icon recognized for keeping items out of children's reach is intended to quickly convey the required message and direct the reader's attention to the label. The icon incorporated with the warning must be at least 8 mm (0.31 in.) in diameter for visibility. Text size must be calculated per Table 12.

• ''Seek immediate medical attention if a battery is suspected to be swallowed or inserted inside any part of the body.'' This sentence implements language in section 2(b)(2) of Reese's Law and informs the consumer what actions should be taken if a button cell or coin battery is ingested or inserted into any part of the body. The warning includes the term ''inserted'' because insertions into the nose can be aspirated into the trachea and lead to ingestion, with the same risk of injury as oral ingestion.

If space prohibits the full warning with the icon shown in Figure 4 in accordance with the formatting requirements of Table 12, packaging is required to use the ''Keep out of Reach'' icon (Figure 5) on the principal display panel and the warning text must be placed on the secondary display panel, as shown in Figure 6. The icon must be at least 20 mm (0.79 in.) in diameter for visibility.

Figure 5. "Keep Out of Reach" Icon

Figure 6. Warning Text Without Icon.



To address the hazard of button cell or coin batteries that become loose or separated from packaging, and to provide critical safety-related information should an ingestion incident occur, the following information implementing section 2(b)(2) of Reese's Law must be placed on the secondary display panel of the packaging:

(1) ''Keep in original package until ready to use.'' This statement instructs consumers to leave the batteries in child-resistant packaging as a specific means of keeping new batteries out of the reach of children.

(2) ''Immediately dispose of used batteries and keep away from children. Do NOT dispose of batteries in household trash.'' This statement instructs consumers on how to prevent ingestion hazards from used batteries by keeping used batteries out of the reach of children, including out of household trash.

(3) ''Call a local poison control center for treatment information.'' This statement makes more actionable the guidance to ''immediately seek medical attention'' as described in section 2(b)(2) of Reese's Law, and provides consumers with a resource for obtaining medical advice suitable to their situation.

D. Required Warnings for Button Cell or Coin Batteries Included Separately With the Consumer Product

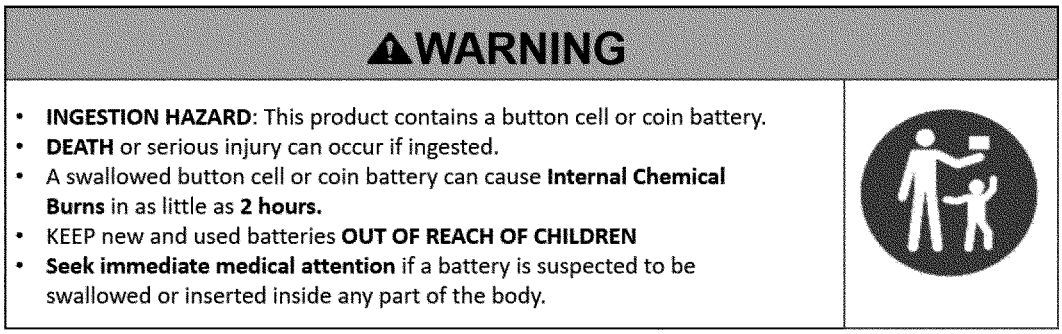
Button cell or coin batteries included with a consumer product, but not yet installed in the product, must contain the warning label in Figure 4 on the principal display panel. If space does not allow the full warning consistent with the formatting requirements of

Table 12, then the icon shown in Figure 5 must be placed on the principal display panel with the text shown in Figure 6 on the secondary display panel, and the icon must be at least 20 mm in diameter for visibility. The goal is to ensure consumers have the opportunity to see the appropriate safety-related warning information and take appropriate action to store spare batteries safely away from children until installed in a consumer product.

E. Required Warnings for Packaging of Consumer Products That Contain Button Cell or Coin Batteries

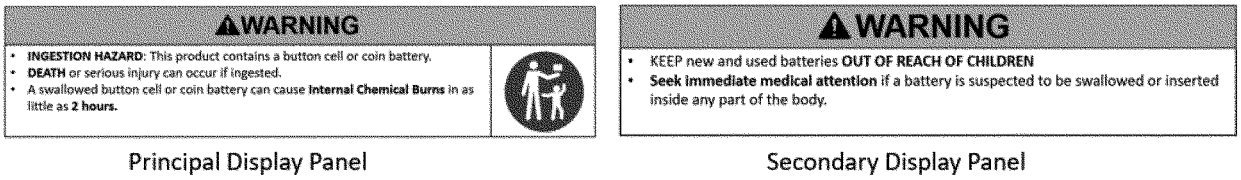
Reese's Law requires warning labels on the packaging of consumer products containing button cell or coin batteries. Each warning label must contain the same wording and icon as the battery packaging, except to make the first warning more explicit about the hazard: ''INGESTION HAZARD: This product contains a button cell or coin battery.'' The warning shown in Figure 7 must be on the principal display panel of the consumer product packaging. Covered consumer products that do not include packaging must affix the warning to the product with a hang tag or sticker label.

Figure 7. Warning for consumer product packaging to indicate the presence of button cell or coin battery and the ingestion hazard.



Product packaging that does not have the space to permit the full warning as indicated in Table 12, must include an abbreviated warning on the principal display panel, with the remaining statements (''KEEP new and used batteries OUT OF REACH OF CHILDREN'' and ''Seek immediate medical attention if a battery is suspected to be swallowed or inserted inside any part of the body'') placed on the secondary display panel, as shown in Figure 8. The icon must be at least 8 mm (0.31 in.) in diameter for visibility. Text size must be calculated per Table 12.

Figure 8. Abbreviated warning if the consumer product packaging does not have space for the full warning on the front.



Principal Display Panel Secondary Display Panel

F. Required On-Product Warnings for Consumer Products That Contain Button Cell or Coin Batteries

Reese's Law requires, as practicable, warnings directly on the consumer product that contains button cell or coin batteries. A consumer product must be permanently marked with an ingestion warning on the product display panel. The warning in Figure 9 must be used:

Figure 9. On-product warning label.

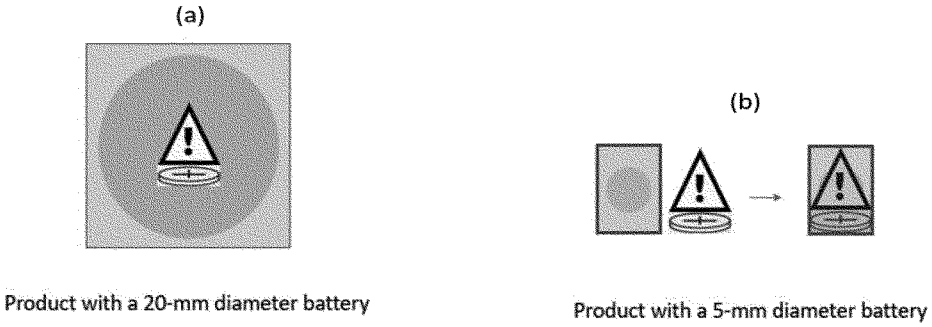
If space on the product does not allow the full warning text shown in Figure 9 in accordance with Table 12, then the product must display the internationally recognized: ''Warning: contains coin battery'' icon, as shown in Figure 10, which is permitted without text.

Figure 10. Safety Alert Symbol to Indicate "Warning: Contains coin battery"

See Staff's NPR Briefing Package at Tab C. For visibility, the icon must be at least 7 mm (0.28 in.) in width and 9 mm (0.35 in.) in height and must be on the product display panel and must be in yellow with black outlines, as shown in Figure 10. The icon must be defined in accompanying printed materials, such as instructions, manual, insert, or hangtag.

Figure 11 illustrates the scaled version of this icon on a product containing a battery, with a 20 mm (0.79 in.) diameter, as well as a scaled version with a 5 mm (0.20 in.) diameter.

Figure 11. (a) 20mm diameter battery and icon, (b) 5 mm (0.20 in.) battery and icon



Based on staff's assessment, we tentatively find that virtually all consumer products can accommodate either the full warning or one of the scaled icons, and we seek comment on that conclusion. However, if the product is too small to include any of the warnings in Figures 9–11, the product is required to:

1. have packaging containing the warning (see requirements for consumer product packaging), or

2. have a hangtag or sticker label with the full warnings, as shown in Figure 7.

G. Required Warnings for Instructions/ Manuals Accompanying Consumer Products

Instructions and manuals for consumer products that contain button cell or coin batteries, if they exist, must contain the full warning label text required for button cell or coin battery packaging, as shown in Figure 7, as well as the three statements implementing section 2(b)(2) of Reese's Law to address the hazard of button cell or coin batteries that become loose or separated from packaging, which provide critical safety-related information should an ingestion incident occur:

- ''Immediately dispose of used batteries and keep away from children. Do NOT dispose of batteries in household trash.''
- ''Even used batteries may cause severe injury or death.''
- ''Call a local poison control center for treatment information.''

If instructions or manuals are not provided with the consumer product, this information must be present on the principal display panel or the secondary display panel of the consumer product packaging, or if there is no consumer product packaging, the accompanying hang tag or sticker label. This ensures that the consumer has the opportunity to see the appropriate safety-related information, even when a consumer product that uses a button cell or coin battery is not sold with a button cell or coin battery.

VI. Required Notifications to Purchasers

In addition to the required warnings specified in Reese's Law, and pursuant to the Commission's independent authority under section 27(e) of the CPSA, the proposed rule requires delivery of technical and performance data to purchasers. These notifications will improve safety communication to consumers for the same products subject to the proposed requirements discussed above, and based on the same hazard assessment. Because these proposed notification requirements rest on legal authority independent of Reese's Law, adopting them is not inconsistent with Reese's Law's specification that the *safety rule promulgated pursuant to section 2 of that statute* ''shall only contain'' the provisions listed by Congress. 15 U.S.C. 2056e(a). For ease of understanding and administration, however, we propose to integrate the text of the notification requirements established under section 27(e) with the warning requirements established in the safety rule under Reese's Law.

A. Websites or Applications That Enable Consumers To Purchase Products Online

Consumers should be able to view battery-related safety information when purchasing products online. Otherwise, consumers would not be exposed to the warnings until they receive the physical product. Learning of the hazard associated with button cell or coin batteries at the time the consumer is searching for product information and

making purchasing decisions may influence those purchasing decisions or the actions taken to protect children against the hazard. Therefore, pursuant to its authority under section 27(e) of the CPSA, the Commission is proposing point-of-sale warning requirements for websites or other internet presence that manufacturers (including importers, per CPSA section 3(a)(11), 15 U.S.C. 2052(a)(11)) use to allow consumers to purchase these products.

Specifically, online sales materials must include the warning in Figure 7 for purchases of button cell or coin batteries, and the warning in Figure 9 for purchases of consumer products containing button cell or coin batteries. The warning must be clearly visible, prominent, and legible next to the product description or near the product image or near the product price.

B. Other Battery Safety Information on the Battery Packaging and Consumer Product Packaging

In addition to the ingestion hazard warning, the proposed rule requires other safety-related information on the battery packaging and consumer product packaging. To reduce battery leakage, fire, and/or explosion hazards that could lead to personal injury, consumers should be aware of, and have ready access to, technical information about safe handling and use of button cell and coin batteries, as well as the characteristics of the batteries themselves. Therefore, we propose the following additional safety information under the authority in section 27(e) of the CPSA:

1. *Battery packaging.*

(4) Battery type (*e.g.,* LR44, CR2032).

(5) Battery chemistry (*e.g.,* silver oxide button or lithium)

(6) Nominal voltage.

Having battery type, chemistry, and voltage on the packaging constitutes performance and technical data that may help identify the battery if an ingestion is suspected. If a button cell or coin battery is ingested, knowing this information could assist medical providers to assess the severity of the risk of injury, and to treat the patient accordingly. For example, lithium button cell or coin batteries are associated with a higher likelihood of injury or death, in part, because they have a greater voltage than other button cell or coin batteries. The compatible battery type and voltage information on the product packaging will also help consumers avoid hazards associated with using incompatible batteries, such as leakage, fire, and/or explosion hazards. In addition, this statement will assist consumers in selecting the correct type of battery for the product, reducing the likelihood that incorrect battery cells will be taken from their secure packaging and left loose and accessible to children.

(7) Year and month or week of manufacture or expiration date.

(8) Name or trademark of the manufacturer or supplier.

Identification of manufacture date and other manufacturer information is technical data that may facilitate recalls resulting from ingestion of button or coin batteries.

• ''Do not mix old and new batteries, different brands or types of batteries, such as alkaline, carbon-zinc, or rechargeable batteries.''

Mixing batteries can contribute to battery leakage, fire, and/or explosion hazards that could lead to personal injury. In addition, this statement will inform the consumer to use the correct type of battery cell that is called for use in the product, reducing the likelihood that incorrect battery cells will be taken from their secure packaging and left loose and accessible to children.

• ''Ensure the batteries are installed correctly according to polarity (+ and −).''

Batteries installed with the wrong polarity can leak or explode. Also, incorrect installation may result in the consumer removing the batteries to install another set of batteries, creating loose batteries.

• ''Remove and immediately discard batteries from equipment not used for an extended period of time.''

This statement is intended to ensure that consumers immediately dispose of batteries in unused products, because if left for an extended period, these batteries can leak, discharge, or explode unexpectedly, creating risks of injury. Furthermore, used button cell or coin batteries may have sufficient energy to cause damage if ingested.

• ''Non-rechargeable batteries are not to be recharged.''

Placing non-rechargeable batteries in a charger can cause battery leakage, fire, and/or exploding hazards. This statement is intended to ensure that consumers do not attempt to recharge non-rechargeable batteries, or leave used batteries accessible to children with the intention of recharging them.

• ''Do not force discharge, recharge, disassemble, heat above (manufacturer's specified temperature rating) or incinerate. Doing so may result in injury due to venting, leakage or explosion resulting in chemical burns.''

This statement warns against actions that may result in external injuries from chemical burns. Damaged button cell or coin batteries also can leak toxic chemicals that poses a risk if ingested.

2. *Consumer product packaging or accompanying hang tag or sticker label.*

Also pursuant to section 27(e) of the CPSA, the principal display panel or the secondary display panel of the consumer product packaging, or if there is no consumer product packaging, the accompanying hang tag or sticker label, must include the following:

• Products with non-replaceable batteries must include a statement indicating the product contains non-replaceable batteries. If a consumer attempts to replace a non-replaceable battery, this action may damage the consumer product or the battery, and contribute to battery leakage, fire and/or explosion hazards. This may also cause the original or the replacement battery to become accessible, contributing to the ingestion hazard.

The following additional requirements were previously described for battery packaging, and for the same reasons are also required on either the principal display panel or secondary display panel of the consumer product packaging, or in the absence of consumer product packaging, on the accompanying sticker or hangtag:

(9) Battery type (*e.g.,* LR44, CR2032).

• Nominal voltage.

3. *Instructions and manuals:*

Likewise, under the authority of CPSA section 27(e), instructions and manuals, when provided with consumer products must include the following additional battery safety-related information that is also required on the battery packaging:

• Battery type (*e.g.,* LR44, CR2032).

• Nominal voltage.

• ''Do not mix old and new batteries, different brands or types of batteries, such as alkaline, carbon-zinc, or rechargeable batteries.''

• ''Remove and immediately discard batteries from equipment not used for an extended period of time.''

• ''Non-rechargeable batteries are not to be recharged.''

• ''Do not force discharge, recharge, disassemble, heat above (manufacturer's specified temperature rating) or incinerate. Doing so may result in injury due to venting, leakage or explosion resulting in chemical burns.''

If instructions or manuals are not provided with the consumer product, this information must be present on the principal display panel or the secondary display panel of the consumer product packaging, or if there is no consumer product packaging, the accompanying hang tag or sticker label. This ensures that the consumer has the opportunity to see the appropriate safety-related

information, even when a consumer product that uses a button cell or coin battery is not sold with a button cell or coin battery.

C. Request for Comment on Requiring a Warning Icon on Button Cell or Coin Batteries

Reese's Law does not require marking or labeling regarding the ingestion hazard directly on button cell or coin batteries. However, the voluntary standard ANSI C18.3M advises to durably and indelibly mark coin cells with the ''Keep Out of Reach'' icon, with a minimum icon size of 6 mm in diameter. In accordance with Reese's Law, the Commission recommends the ''Keep Out of Reach'' icon be used in conjunction with warning labels on battery and consumer product packaging to quickly convey the required message and direct the reader's attention to the warning label. CPSC staff advises that requiring button cell or coin batteries that are visible within the packaging at the point of sale to have the ''Keep Out of Reach'' icon will further remind the consumer of the ingestion hazard, and direct attention to the icon and warning label on the battery packaging. Additionally, placing the ''Keep Out of Reach'' icon on button cell or coin batteries would continue to inform consumers of the ingestion hazard posed by the battery at all stages of its lifecycle, including while it is in battery packaging, when placed in a consumer product, or when loose.

The Commission requests comment on whether the rule should require button cell or coin batteries to be durably and indelibly marked with the ''Keep Out of Reach'' icon where size permits, at a minimum size of 6 mm in diameter, and if so, whether the appropriate legal authority is Reese's Law, section 27(e) of the CPSA, or another statute.

Figure 12. "Keep out of Reach" Icon Etched onto Battery

VII. Description of the Proposed Rule

As noted, we propose for the sake of clarity, convenience, and consistency to integrate the rule text adopted under Reese's Law with that adopted under the separate authority of CPSA section 27(e), using the same definitions and exceptions for the section 27(e) requirements as for the requirements based on Reese's Law. Below, we describe the resulting provisions of proposed 16 CFR part 1263.

A. Section 1263.1 Scope, Purpose, Effective Date, Units, and Exemption

Proposed § 1263.1(a) explains the scope and purpose of the safety standard required by Reese's Law. 15 U.S.C. 2056e, Public Law 117–171. Reese's Law requires a rule intended to eliminate or adequately reduce the risk of injury and death to children 6 years old and younger from ingesting button cell or coin batteries. Based on section 2 of Reese's Law, the scope of the proposed rule includes consumer products that contain, or are designed to use, button cell or coin batteries, the packaging of such consumer products and accompanying literature, and the packaging of button cell or coin batteries.

Section 2(a) of Reese's Law requires performance requirements for child-resistant button cell or coin battery compartments during reasonably foreseeable use and misuse of consumer products that use such batteries. Proposed § 1263.1(a) also explains that Reese's Law provides warning label requirements for packaging containing button cell or coin batteries, packaging of consumer products containing such batteries, consumer products, and instructions and manuals accompanying consumer products. The proposed rule also explains that the Commission will require point-of-sale notification of performance and technical data under the Commission's authority in section 27(e) of the CPSA, 15 U.S.C. 2076(e).

Section 1263.1(b) describes the effective date of the proposed rule. Consistent with section 6 of Reese's Law (15 U.S.C. 2056e Notes), the rule proposes that all consumer products and packaging containing button cell or coin batteries that are subject to the proposed rule, and that are manufactured or imported after the proposed effective date of 180 days following publication of the final rule in the **Federal Register**, must comply with the requirements of this part.

Section 1263.1(c) provides that values stated without parentheses are the requirement, while values in parentheses are approximate values. This proposal is consistent with UL 4200A. Section 1263.1(d) sets forth the statutory exemption for toys that meet the mandatory toy standard in section 4 of Reese's Law, proposing that ''any object designed, manufactured, or marketed as a plaything for children under 14 years of age that is in compliance with the battery accessibility and labeling requirements of 16 CFR part 1250, Safety Standard Mandating ASTM F963 for Toys, is exempt from the requirements of this part.'' *See* 15 U.S.C. 2056e Notes.

Because section 2(a) of Reese's Law directs the Commission to adopt a rule addressing the risk of injury from ingestion, and because the purpose of the proposed rule is to address the ingestion hazard associated with button cell or coin batteries, proposed § 1263.1(e) states that button cell or coin batteries that the Commission has determined do not present an ingestion risk are not subject to this proposed rule. The proposal applies to zinc-air button cell or coin batteries.

B. Section 1263.2 Definitions

Proposed § 1263.2 describes the definitions used for this consumer product safety rule and notification requirements. The proposed rule explains that in addition to the definitions given in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) and the definitions in section 5 of Reese's Law (15 U.S.C. 2056e Notes), the Commission proposes to add eight definitions that specifically apply to this proposed rule. The definitions are listed in the proposed rule in alphabetical order.

Accessible and Accessibility Probe. As described in section VII.C, the proposed performance requirements for battery compartments require that after use-and-abuse testing, a button cell or coin battery must not become accessible to children. The proposed rule measures accessibility using a test probe. Accordingly, proposed § 1263.2 defines the required test probe, stating that an ''accessibility probe'' means ''Test Probe 11 in IEC 61032 Protection of Persons and Equipment by Enclosures—Probes for Verification.'' Similarly, proposed § 1263.2 defines ''accessible'' to mean that the tests probe is ''able to be contacted by the accessibility probe.'' This means a battery is accessible if the test probe can touch a button cell or coin battery. Specifying the test probe and the definition of ''accessible'' in the proposed rule is intended to assist those who test consumer products to test consistently and reliability for the accessibility of button cell or coin batteries during testing to the standard.

Button Cell or Coin Battery. Proposed § 1263.2 restates the statutory definition of a ''button cell or coin battery'' in section 5 of Reese's Law. 15 U.S.C. 2056e Notes. A ''button cell or coin battery'' means ''(1) a single cell battery with a diameter greater than the height of the battery; or (2) any other battery, regardless of the technology used to produce an electrical charge, that is determined by the Commission to pose an ingestion hazard.'' *Id.* For this proposed rule, the Commission is focusing on addressing button cell and coin batteries under part (A) of the definition, because other batteries where the diameter is less than the height, such as AAA cylindrical batteries, do not pose the same type of ingestion hazard as button cell or coin batteries. For example, cylindrical batteries can pose a choking hazard, and CPSC is aware that consumers have ingested cylindrical batteries; however, the medical literature shows that injury or death due to ingestion of a cylindrical battery is rare. Consequently, the Commission is not including cylindrical batteries in the proposed rule at this time, but will expect staff to continue to monitor battery ingestion data. If CPSC becomes aware of a serious ingestion hazard associated with another battery type, section 2(g) of Reese's Law allows the Commission to undertake additional rulemaking to address the hazard at any time. 15 U.S.C. 2056e(g).

Consumer product containing button cell or coin batteries. Proposed § 1263.2 contains the statutory definition of a ''consumer product containing button cell or coin batteries'' from section 5 of Reese's Law. 15 U.S.C. 2056e Notes. The Commission preliminarily interprets this definition as providing that these consumer products include consumer products that are sold with a button cell or coin battery, and consumer products that are sold without a battery but are designed to use one or more button cell or coin batteries, regardless of whether such batteries are intended to be replaced by the consumer or are included with the product or sold separately.

Ingestion Hazard. Proposed § 1263.2 describes the ''ingestion hazard'' addressed by the proposed rule. Based on a review of the medical literature, CPSC incident data, and data from the NCPC, an ingestion hazard is caused when a button cell or coin battery becomes lodged in the body, and can potentially cause death or serious injury through choking, generation of hazardous chemicals, leaking of hazardous chemicals, electrical burns, pressure necrosis, or other means.

Principal Display Panel and Secondary Display Panel. Proposed § 1263.2 also explains what a ''principal display panel'' means to aid in understanding the required placement of warning statements on consumer product and button cell or coin battery packaging. The proposed rule explains that a ''principal display panel'' is typically on the front of the retail package of button cell or coin batteries or consumer products containing such batteries. The principal display panel is the panel most likely to be displayed, shown, presented, or examined under normal or customary conditions of display for retail sale. This definition assists in distinguishing the principal display panel from the proposed definition of a ''secondary display panel,'' described as a ''display panel for a retail package of button cell or coin batteries or retail package of a consumer product containing such batteries that is opposite or next to the principal display panel. The secondary display panel is typically the rear or side panels of the package.''

Product Display Panel. Finally, proposed § 1263.2 describes a ''product display panel'' to differentiate the surface of a consumer product battery compartment, as opposed to the packaging of button cell or coin batteries and the packaging of consumer products that contain such batteries. A product display panel is:

> the surface area on, near, or in the battery compartment. For consumer products with replaceable button cell or coin batteries, the product display panel must be visible while a consumer installs or replaces the button cell or coin battery. For consumer products with nonreplaceable button cell or coin batteries, the product display panel must be visible upon access to the battery compartment.

The intent of this definition is to inform industry that warnings on a product display panel must be located where a consumer will see the warning when interacting with the battery compartment, as required in section 2(a)(2)(C) of Reese's Law. 15 U.S.C. 2056e(a)(2)(C).

C. Section 1263.3 Requirements for Consumer Products Containing Button Cell or Coin Batteries

The primary way that children access button cell or coin batteries and then ingest them is by accessing batteries from a consumer product. Accordingly, as required by section 2(a) of Reese's Law, the proposed rule would establish performance requirements for child-resistant button cell or coin battery compartments on consumer products during reasonably foreseeable use and misuse. Performance requirements are based on staff's incident review, engineering analysis, testing of consumer products, and assessment that none of the relevant voluntary standards meet the risk reduction and warning requirements of Reese's Law sections 2(a) and (d). The proposed rule is based on the provisions of several existing voluntary standards, including UL 4200A–21, IEC 62368–1, and ASTM F963–17 (as codified in 16 CFR part 1250). Performance requirements in the proposed rule would apply to consumer products containing button cell or coin batteries with replaceable and non-replaceable batteries.

General Requirements. Proposed § 1263.3(a) contains general requirements for consumer products containing button cell or coin batteries. This section explains that, in general, consumer products containing button cell or coin batteries must meet the performance and labeling requirements in the proposed rule to minimize the risk of children accessing and ingesting button cell or coin batteries.

Performance requirements for consumer products containing button cell or coin batteries that are removable. Proposed § 1263.3(b) describes the specific performance requirements for consumer products containing button cell or coin batteries that are removable. A removable or replaceable button cell or coin battery in a consumer product cannot be made accessible, meaning able to be contacted with the accessibility probe, when tested to § 1263.3(d); must meet the performance tests in § 1263.3(e); and must require a tool, such as a screwdriver or coin, to open, or be secured using an enclosure

that requires a minimum of two independent and simultaneous hand movements to open (a double-action locking mechanism).

The proposed rule also requires that battery compartments secured by one or more screws, or a twist-on access cover, meet a test for minimum torque (0.5 Nm (4.4 in-lb)) and minimum angle of rotation (90 degrees), or the fastener(s) must engage a minimum of two full threads. Moreover, screws or fasteners used to secure the battery compartment enclosure must be captive to the compartment door, cover, or closure. Unlike UL 4200A and IEC 62368–1, the proposed rule does not exclude from the requirement for captive screws large panel doors leading to button cell or coin battery compartments. CPSC requests comment on the rationale for such an exception and the types of products to which it should apply, if adopted.

Performance requirements for consumer products containing button cell or coin batteries that are non-removable. Proposed § 1263.3(c) explains that consumer products containing button cell or coin batteries not intended for removal or replacement must be made inaccessible by using a battery compartment enclosure that complies with the performance requirements of § 1263.3(b), meaning secured in a compartment that meets the same requirements as removable button cell or coin batteries, or by securing a button cell or coin battery compartment using soldering, fasteners such as rivets, or equivalent means, that passes the *Secureness Test* in § 1263.3(f).

Accessibility test method. Proposed § 1263.3(d) assesses whether a child can access a button cell or coin battery installed in a consumer product by determining whether the specified accessibility probe can make contact with a button cell or coin battery. If children can touch the battery, then they may be able to remove the battery, leading to a potential ingestion. The test method requires that any part of the battery compartment enclosure that can be opened or removed without a tool, and with fewer than two independent and simultaneous movements (*e.g.,* a zipper or hook and loop), be removed (§ 1263.3(d)(1)). The test method also states that if any part of the battery compartment is protected by pliable materials, such as fabric, paper, foam, or vinyl, or a seam, the tester must first apply the Tension Test for Seams in Stuffed Toys and Beanbag-Type Toys in 16 CFR part 1250, to determine whether the battery compartment enclosure can become exposed or accessible, using the specified force of 70.0 N (15.7 lbf) (§ 1263.3(d)(2)). The test method instructs that if during this assessment a new part of the battery compartment enclosure becomes exposed or accessible, the tester must repeat the test in § 1263.3(d)(1), and the test in paragraph (d)(2), until no new part of the battery compartment enclosure becomes exposed or accessible, and then conduct the test in § 1263.3(d)(3).

The test in § 1263.3(d)(3) instructs the tester to insert or apply the accessibility probe to any depth that a battery compartment opening will permit, and rotate or angle the accessibility probe before, during, and after insertion or application through the battery compartment opening to any position that is necessary to determine whether the probe can contact the button cell or coin battery. This test is intended to simulate a child attempting to reach a button cell or coin battery installed in the consumer product; however, this test is not intended to judge the strength of the material comprising the battery compartment. Testers should use the minimum force necessary to determine whether the accessibility probe can contact a button cell or coin battery installed in the consumer product.

Performance tests for consumer products containing button cell or coin batteries. Proposed § 1263.3(e) states that testers should first conduct the required pre-conditioning steps in § 1263.3(e)(1) before testing consumer products to the performance requirements in § 1263.3(e)(2) (for products with replaceable battery compartments), and § 1263.3(f) (for products with accessible non-replaceable batteries). Testers are also instructed to perform pre-conditioning and performance requirements in the order presented in the proposed rule.

Performance test: Pre-conditioning: Stress Relief. Proposed § 1263.3(e)(1) requires each test sample of a consumer product to be pre-conditioned prior to conducting the applicable performance tests. The first pre-conditioning step, § 1263.3(e)(1)(i), is ''stress relief'' and applies to all covered consumer products, *i.e.,* those with replaceable and non-replaceable batteries. Stress relief requires heating each sample consumer product that has a battery compartment enclosure made from molded or formed thermoplastic materials in a circulating air oven for at least 7 hours, at an oven temperature of the higher of at least 70 °C (158 °F) or at least 10 °C (18 °F) higher than the maximum temperature of the thermoplastic battery compartment enclosure during the most stringent normal operation of the consumer product. The rule proposes that testers must allow the product sample to cool to room temperature after removal from the oven before proceeding, to achieve more consistent results across tests and test labs.

Performance test: Pre-conditioning: Battery replacement. Mechanical pre-conditioning breaks-in the component parts associated with securing the battery compartment and is needed to address durability issues associated with battery compartments, such as stripping of threads. Accordingly, proposed § 1263.3(e)(1)(ii), which applies only to consumer products with button cell or coin batteries intended to be removable or replaceable, requires opening the battery compartment enclosure, removing and replacing the button cell or coin battery, and closing the battery compartment enclosure for a total of 10 cycles. When battery compartment enclosures are secured with one or more screws, the screws must be loosened and then tightened using a suitable screwdriver, and applying a continuous linear torque, according to the Torque to Be Applied to Screws table, Table 20, of the Standard for Audio, Video and Similar Electronic Apparatus—Safety Requirements, UL 60065. If the screw(s) do not meet the specified torque requirements during this step, the test method requires removing the screws and repeating the accessibility test in proposed § 1263.3(d).

Performance test: Abuse tests. After pre-conditioning consumer product samples, the proposed rule requires that all consumer product samples with removable or replaceable batteries must pass a series of six abuse tests, conducted in the sequence set forth in the proposed rule. After testing, each sample must meet the compliance requirement in proposed § 1263.3(e)(3).

Performance test: Abuse tests: Drop test. To address foreseeable risks of breaking consumer products or their battery compartments, proposed § 1263.3(e)(2)(i) requires each sample to be dropped 10 times from a height of 1.0 m (39.4 in) onto a horizontal hardwood surface in positions likely to produce the maximum force on the battery compartment enclosure. The hardwood surface must be at least 13 mm (0.5 in) thick, mounted on two layers of nominal 19 mm (0.75 in) thick plywood, and placed on a concrete or equivalent non-resilient surface.

Performance test: Abuse tests: Impact test. Consistent with the UL 4200A standard, proposed § 1263.3(e)(2)(ii) requires that the battery compartment enclosure door or cover on each sample consumer product be subjected to three, at least 2–J (1.5-ft·lbf) impacts, as shown

in Figures 1 and 2 to proposed paragraph § 1263.3(e)(2)(ii).

Performance test: Abuse tests: Crush test. To address the scenario of a child opening a battery compartment that cannot be impacted directly during the drop test proposed § 1263.3(e)(2)(iii) requires each sample consumer product to be subjected to a crush test using requirements similar to UL 4200A and IEC 62368–1. The crush test simulates a child pushing on the product with hands or feet, which cannot be assessed during the drop test on some consumer products. The proposed rule requires that each sample be supported by a fixed, rigid surface, in positions likely to produce the most adverse results, as long as the position of the consumer product is self-supported, and then apply a crushing force of at least 335 N (75.3 lbf) to the exposed surface for a period of 10 seconds. The test method states the force should be applied using a flat surface measuring approximately 100 mm by 250 mm (3.9 in by 9.8 in).

Performance test: Abuse tests: Compression test. Proposed § 1263.3(e)(2)(iv) requires the compression test in ASTM F963 as codified in the toy standard. It further subjects consumer products to a crushing load that addresses children unintentionally opening battery compartments that cannot be impacted directly during the drop test, but can be pushed open with hands or fingers. The test method requires that if any surface of the battery compartment enclosure is accessible to a child and inaccessible to flat surface contact during the drop test, then apply the Compression Test from 16 CFR part 1250 (the mandatory toy standard) to that surface, using a force of at least 136 N (30.6 lbf).

Performance test: Abuse tests: Torque test. The proposed rule applies to products not specifically contemplated by UL 4200A or IEC 62368–1, such as shirts and shoes that light up and rely on a button cell or coin battery to provide a power source. Accordingly, the proposed rule includes torque and tension tests to address battery accessibility to children in pliable products. If a child can grasp any part of the battery compartment enclosure on a sample consumer product, including the door or cover, with at least the thumb and forefinger, or using teeth, proposed § 1263.3(e)(2)(v) requires the battery compartment enclosure to be tested to the Torque Test for Removal of Components from 16 CFR part 1250 (the toy standard), using a torque of at least 0.50 Nm (4.4 in.-lbf).

Performance test: Abuse tests: Tension test. For the same reasons stated for the proposed torque requirement, if a child can grasp any part of the battery compartment enclosure on a sample consumer product, including the door or cover, with at least the thumb and forefinger, or using teeth, proposed § 1263.3(e)(2)(vi) requires application of the Tension Test for Removal of Components from 16 CFR part 1250 (the toy standard) to the battery compartment enclosure, using a force of at least 70.0 N (15.7 lbf).

Performance test: Abuse tests: Compliance. Proposed § 1263.3(e)(3) provides that if a button cell or coin battery becomes accessible or is liberated from a consumer product as a result of any of the abuse tests in § 1263.3(e)(2), the consumer product is noncompliant and fails testing. Additionally, after completing all abuse testing, the proposed rule requires that the tester apply a force of at least 50 N (11.2 lbf) for 10 seconds to the battery compartment enclosure door or cover using the accessibility probe at the most unfavorable position on the battery compartment enclosure, and in the most unfavorable direction. The force must be applied in only one direction at a time. If the battery compartment enclosure door or cover opens or does not remain functional, or the button cell or coin battery becomes accessible, the consumer product is noncompliant and fails testing.

Performance test: Secureness test. Proposed § 1263.3(f) applies only to button cell or coin batteries not intended for removal or replacement that are installed in a consumer product, and that are accessible based on the test in § 1263.3(b). Such products must be tested by applying a test hook, as shown in Figure 3 to paragraph § 1263.3(f) of the regulation text, using a force of at least 22 N (4.9 lbf), directed outwards, applied for 10 seconds at all points where application of a force is possible. To pass the test, the button cell or coin battery cannot become accessible or liberate from the consumer product during testing.

D. Section 1263.4 Requirements for Marking and Labeling

As explained in sections V and VI of this preamble, the proposed rule establishes warning label requirements for packaging containing button cell or coin batteries; packaging of consumer products containing such batteries (regardless of whether the batteries are permanent or replaceable); battery compartments of consumer products that contain button cell or coin batteries (where practicable and regardless of whether the batteries are permanent or replaceable); instructions or manuals that accompany such consumer products; as well as time-of-sale (internet and in-store) notification of performance and technical data that provides information about the safety of button cell or coin batteries. Please see sections V and VI of this preamble for a detailed description and rationale for the proposed warning label requirements.

E. Section 1263.5 Severability

Section 1263.5 proposes a severability clause. The proposed provision states the Commission's intent that if certain requirements in the rule are stayed or determined to be invalid by a court, the remaining requirements in the rule should continue in effect. This severability clause would apply to all provisions whether adopted as part of the safety standard under Reese's Law or as a notification requirement under section 27(e) of the CPSA, to reflect the Commission's intent that part 1263 as whole be given its greatest effect.

VIII. Testing, Certification, and Notice of Requirements

Section 14(a) of the CPSA includes requirements for certifying that consumer products comply with applicable mandatory standards. 15 U.S.C. 2063(a). Section 14(a)(1) addresses required certifications for non-children's products, and sections 14(a)(2) and (a)(3) address certification requirements specific to children's products.

Non-Children's Products. Section 14(a)(1) of the CPSA requires every manufacturer (which includes importers per 15 U.S.C. 2052(a)(11)) of a non-children's product that is subject to a consumer product safety rule under the CPSA or a similar rule, ban, standard, or regulation under any other law enforced by the Commission to certify that the product complies with all applicable CSPSC-enforced requirements. 15 U.S.C. 2063(a)(1). Section 14(g) of the CPSA contains content and availability requirements for certificates. 15 U.S.C. 2063(g).

Children's Products. A ''children's product'' is a consumer product that is ''designed or intended primarily for children 12 years of age or younger.'' 15 U.S.C. 2052(a)(2). Section 4 of Reese's Law specifically exempts from the performance and labeling requirements in section 2 of the law, any toy product that is in compliance with the battery accessibility and labeling requirements in 16 CFR part 1250, the mandatory toy standard. However, all non-toy children's products that contain button cell or coin batteries are subject to the proposed rule and must be tested by a

CPSC-accepted third party laboratory and certified as compliant.

The following factors are relevant when determining whether a product is a children's product:

- manufacturer statements about the intended use of the product, including a label on the product if such statement is reasonable;
- whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger;
- whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger; and
- the Age Determination Guidelines issued by CPSC staff in January 2020, and any successor to such guidelines.

Id. ''For use'' by children 12 years and younger generally means that children will interact physically with the product based on reasonably foreseeable use. 16 CFR 1200.2(a)(2). Children's products, for example, may be decorated or embellished with a childish theme, be sized for children, or be marketed to appeal primarily to children. *Id.* § 1200.2(d)(1).

Section 14(a)(2) of the CPSA requires the manufacturer or private labeler of a children's product that is subject to a children's product safety rule to certify that, based on a third party conformity assessment body's testing, the product complies with the applicable children's product safety rule. 15 U.S.C. 2063(a)(2). The Commission's requirements for children's product testing and certification are codified in 16 CFR part 1107. Section 14(a) of the CPSA also requires the Commission to publish a notice of requirements (NOR) for a third party conformity assessment body (*i.e.,* testing laboratory) to obtain accreditation to assess conformity with a children's product safety rule. 15 U.S.C. 2063(a)(3)(A). Because some consumer products that contain button cell or coin batteries are children's products, the proposed rule is a children's product safety rule, as applied to those products. Accordingly, if the Commission issues a final rule, it must also issue an NOR.

The Commission published a final rule, codified at 16 CFR part 1112, entitled *Requirements Pertaining to Third Party Conformity Assessment Bodies,* which established requirements and criteria concerning testing laboratories. 78 FR 15836 (Mar. 12, 2013). Part 1112 includes procedures for CPSC to accept a testing laboratory's accreditation and lists the children's product safety rules for which CPSC has published NORs. When CPSC issues a new NOR, it must amend part 1112 to include that NOR. Accordingly, as part of this NPR for child-resistant battery compartments on consumer products, the Commission proposes to amend part 1112 to add the ''Safety Standard and Notification Requirements for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries'' to the list of children's product safety rules for which CPSC has issued an NOR.

Testing laboratories that apply for CPSC acceptance to test consumer products containing button cell or coin batteries, that are children's products, to comply with the new rule, would have to meet the requirements in part 1112. When a laboratory meets the requirements of a CPSC-accepted third party conformity assessment body, the laboratory can apply to CPSC to include 16 CFR part 1263, *Safety Standard and Notification Requirements for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries,* in the laboratory's scope of accreditation of CPSC safety rules listed on the CPSC website at: *www.cpsc.gov/labsearch.*

IX. Effective Date

The APA generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). The Commission proposes that a final rule containing (1) performance and warning label requirements for consumer products containing button cell or coin batteries, and (2) warning label requirements for button cell or coin battery packaging, will become effective 180 days after publication of a final rule in the **Federal Register**. Therefore, in accordance with section 6 of Reese's Law, products manufactured or imported after 180 days from publication of a final rule would be required to comply with the rule.

The Commission is proposing 180 days to comply with the rule because a substantial number of consumer products containing button cell or coin batteries currently do not meet the performance requirements in UL 4200A or ASTM F963, and many affected industries will be unfamiliar with all or part of the proposed requirements. These industries may need to redesign, test, and certify to the requirements in the rule. Children's products that are not toys will require third party testing to the rule, and 180 days will provide sufficient time for test labs to become ISO-accredited and have this accreditation accepted by CPSC to test children's products. Additionally, the warning label requirements in the proposed rule include specific language that requires manufacturers to revise or reprint all existing packaging and to revise on-product warnings, where practicable.

A 180-day effective date reflects similar language in Reese's Law, which in section 3(a) sets a 180-day effective date for the child-resistant packaging requirements. The Commission requests comment on whether a later or an earlier effective date would be appropriate to comply with the proposed requirements and asks commenters to provide specific information to support such a later or an earlier effective date.

X. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) requires that agencies review a proposed rule for the rule's potential economic impact on small entities, including small businesses. Section 603 of the RFA generally requires that agencies prepare an initial regulatory flexibility analysis (IRFA) and make the analysis available to the public for comment when the agency publishes an NPR. 5 U.S.C. 603. The IRFA must describe the impact of the proposed rule on small entities and identify significant alternatives that accomplish the statutory objectives and minimize any significant economic impact of the proposed rule on small entities. CPSC staff prepared an IRFA for this rulemaking that appears at Tab E of the Staff's NPR Briefing Package. We provide a summary of the IRFA below.

A. Reasons for Agency Action and Legal Basis for NPR

The proposed rule is intended to address ingestion of button cell or coin batteries by children 6 years old and younger, and the associated deaths and injuries, as required by Reese's Law, 15 U.S.C. 2056e, and authorized by section 27(e) of the CPSA, 15 U.S.C. 2076(e). As detailed in Tab D of Staff's NPR Briefing Package, the proposed rule would require performance requirements for button cell or coin battery-powered consumer products, and require marking and labeling of consumer products, consumer product packaging, and button cell or coin battery packaging, as provided in Tab C of Staff's NPR Briefing Package.

B. Small Entities to Which the Proposed Rule Would Apply

The North American Industry Classification System (NAICS) defines product codes for U.S. firms. Firms that manufacture button cell or coin battery-powered consumer products may list their business under a large variety of NAICS product codes. Most of these

firms likely fall under the following NAICS codes: 334118 Computer Terminal and Other Computer Peripheral Equipment Manufacturing; 334310 Audio and Video Equipment Manufacturing; 335999 All Other Miscellaneous Electrical Equipment and Component Manufacturing; and 339920 Sporting and Athletic Goods Manufacturing. Importers of button cell or coin battery-powered consumer products are also as varied as the manufacturers. Staff expects most of the firms to fall under the following NAICS codes as wholesalers: 423620 Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers; 423430 Computer and Computer Peripheral Equipment and Software Merchant Wholesalers; and 423690 Other Electronic Parts and Equipment Merchant Wholesalers.

Retailers of button cell or coin battery-powered consumer products consist of a large variety of retailer types from large, ''big box'' retailers, to smaller specialized product firms. Nearly every NAICS code listed under retail trade (44, 45) may sell a product within scope of the proposed rule. Staff estimates that most of these products are sold by firms listed in NAICS codes 443140 Electronics and Appliance Retailers; 455219 All Other General Merchandise Retailers; 459420, Gift, Novelty, and Souvenir Retailers; 452000 General Merchandise Stores; and 459110 Sporting Goods Retailers.

Under U.S. Small Business Administration guidelines, a manufacturer, importer, and retailer of button cell or coin battery-powered consumer products is categorized as ''small,'' based on the associated NAICS code. Manufacturers are categorized as small by the number of employees and importers/retailers by annual revenues. Based on 2017 data from U.S. Census Bureau, and a sample of retailers' estimated revenues, staff estimated the number of firms classified as small for each NAICS code listed above (Census Bureau, 2020). The tables below provide the estimates of the number of small firms by each code.

TABLE 13—ESTIMATED NUMBER OF SMALL MANUFACTURERS AND IMPORTERS

NAICS code	Description	SBA size standard for manufacturers/ importers (# of employees)	Number of firms that meet size standard
334118	Computer Terminal and Other Computer Peripheral Equipment Manufacturing.	1,000	509
334290	Other Communications Equipment Manufacturing	750	305
334310	Audio and Video Equipment Manufacturing	750	453
335210	Small Electrical Appliance Manufacturing	1,500	119
335999	All Other Miscellaneous Electrical Equipment and Component Manufacturing.	500	734
339920	Sporting and Athletic Goods Manufacturing	750	1,564
339940	Office Supplies (except Paper) Manufacturing	750	412
339999	All Other Miscellaneous Manufacturing	500	5,714
423420	Office Equipment Merchant Wholesalers	200	2,197
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers.	250	5,743
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers.	225	1,956
423690	Other Electronic Parts and Equipment Merchant Wholesalers	250	8,826
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers.	100	4,521
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	100	8,350

TABLE 14—ESTIMATED NUMBER OF SMALL RETAILERS

NAICS code	Description	SBA size standard for retailers (annual revenue) $millions	Number of firms that meet size standard
444110	Home Centers	41.50	1,526
444130	Hardware Retailers	14.50	9,623
444240	Nursery, Garden Center, and Farm Supply Retailers	19.00	13,228
443140	Electronics and Appliance Retailers	35.00	18,906
455110	Department Stores	35.00	11
455211	Warehouse Clubs and Supercenters	41.50	3
455219	All Other General Merchandise Retailers	35.00	7,812
456110	Pharmacies and Drug Retailers	33.00	18,912
459110	Sporting Goods Retailers	23.50	16,123
459410	Office Supplies and Stationery Retailers	35.00	2,646
459420	Gift, Novelty, and Souvenir Retailers	12.00	15,264
459999	All Other Miscellaneous Retailers	10.00	36,225
452000	General Merchandise Stores	35.00	7,832

C. Costs and Impact of the Proposed Rule on Small Entities

Button cell or coin battery-powered consumer products may require redesign to meet the rule's requirement for a battery compartment that requires a coin or tool to secure the enclosure (''tool lock''), or a double-action lock. Button cell or coin battery-powered consumer product manufacturers would most likely adopt a tool lock secured with a screw for affected products that currently do not conform to the proposed rule requirements. The potential costs of this proposed rule, therefore, are the incremental cost to incorporate a screw lock, and the one-time research, development, and retooling costs associated with any changes to battery compartments. For products that incorporate a double-action lock to secure the compartment, the Commission expects the only design-related cost incurred would be the redesign of the compartment to accommodate the change.

Staff's estimate of the incremental costs to modify a battery compartment for a tool lock ranges from $0.02 to $0.04 per product. The estimate of possible research, development, and retooling costs is a maximum of $15,400 per firm. We expect firms that choose to meet the requirement of the proposed rule using a double-action lock would only incur research and development costs.

Manufacturers would likely incur additional costs to certify that their button cell or coin battery-powered consumer products meet the proposed rule, as required by section 14 of the CPSA, 15 U.S.C. 2063. For general use products, the certification must be based on a test of each product or a reasonable testing program. Manufacturers may complete the testing themselves or use a testing laboratory. Certification of children's products, however, must be completed by a CPSC-accepted, third party conformity assessment body (*i.e.,* third party laboratory). The cost of laboratory certification testing is expected to range from $150 to $350 per product sample. These third party testing costs should be considered as a possible maximum testing cost of the proposed rule, because less costly alternatives may be available.[14]

To comply with the proposed rule, small manufacturers would incur a one-time redesign cost and continuous incremental component costs, described above, for some product lines that currently do not meet the requirements. We do not expect most small manufacturers to suffer a disproportionate cost effect from the proposed rule. Firms that rely heavily on the production of small, unique or novel electronic products, or high-volume, low-price products, could be affected adversely, however. Retail prices for button cell or coin battery-powered consumer products vary widely, with the least expensive product, on a per-unit basis, being mini flashlights at $1.00.[15] A small manufacturer could incur costs that exceed 1 percent of annual revenue if the firm only produced these high-volume, low-price, or novel electronic products. Also, smaller manufacturers with less than $770,000 to $1,540,000 in annual revenue could incur one-time costs that exceed 1 percent of annual revenue, based on CPSC staff's estimate of the potential research and development costs, which range from $7,700 to $15,400 per firm.

Generally, CPSC staff considers an impact to be potentially significant if it exceeds 1 percent of a firm's revenue. CPSC staff anticipates a potentially significant impact on some small firms that manufacture button cell or coin battery-powered consumer products. Staff assesses, however, that most small firms would not incur costs that exceed 1 percent of annual revenues, and therefore, would not be significantly impacted by the proposed rule.

D. Alternatives

Under section 603(c) of the Regulatory Flexibility Act, an IRFA analysis should ''contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of the applicable statutes and which minimize any significant impact of the proposed rule on small entities.'' 5 U.S.C. 603(c). CPSC staff assessed that the broad scope of Reese's Law does not allow for a significant alternative that would reduce impacts to small businesses, such as limiting scope, providing exemptions, and educating consumers in lieu of regulatory action. To reduce the impact of the proposed rule on small firms, CPSC proposes not to require labeling of zinc-air batteries, which do not pose the same type of ingestion hazard as other button cell or coin batteries. This proposal will decrease burden, but not consequentially, because incremental labeling costs are not significant. CPSC also could refrain from proposing the additional labeling requirements under section 27(e) of the CPSA, which are not required by Reese's Law. However, removing section 27(e) performance and technical data requirements would reduce burden by an inconsequential amount, because firms would still have to conform to the other labeling provisions mandated by Reese's Law. The incremental increase in burden from staff's additional labeling requirements is insignificant.

XI. Environmental Considerations

The Commission's regulations address whether the agency is required to prepare an environmental assessment or an environmental impact statement. Under these regulations, certain categories of CPSC actions normally have ''little or no potential for affecting the human environment,'' and therefore, do not require an environmental assessment or an environmental impact statement. 16 CFR 1021.5(c)(1). Safety standards providing performance and labeling requirements for consumer products that contain button cell or coin batteries fall within this categorical exclusion.

XII. Paperwork Reduction Act

This proposed rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501–3521). Under the PRA, an agency must publish the following information:

- A title for the collection of information;
- A summary of the collection of information;
- A brief description of the need for the information and the proposed use of the information;
- A description of the likely respondents and proposed frequency of response to the collection of information;
- An estimate of the burden that will result from the collection of information; and
- Notice that comments may be submitted to OMB.

44 U.S.C. 3507(a)(1)(D). In accordance with this requirement, the Commission provides the following information:

Title: Amendment to Third Party Testing of Children's Products, approved previously under OMB Control No. 3041–0159.

Summary, Need, and Use of Information: Based on the requirements in Reese's Law, 15 U.S.C. 2056e(a) and (b), and section 27(e) of the Consumer Product Safety Act, 15 U.S.C. 2076(e),

[14] Certificate content requirements are set forth in section 14(g) of the CPSA and codified in 16 CFR part 1110. A reasonable testing program performed by the manufacturer would meet the requirements for general use (non-children's) products, but children's products are required to be tested and certified based on the third party testing requirements in 16 CFR part 1107.

[15] Based on staff's review of product offerings on retailer websites and in-store locations.

the proposed consumer product safety standard prescribes performance requirements for child-resistant battery compartments on consumer products that contain button cell or coin batteries, and warning requirements for button cell and coin-battery packaging, consumer product packaging, consumer products, and instructions and manuals. These performance and labeling requirements are intended to reduce or eliminate injuries and deaths associated with children 6 years old and younger ingesting button cell or coin batteries.

Section 4 of Reese's Law specifically exempts from the performance and labeling requirements in section 2 of the law, any toy product [16] that is in compliance with the battery accessibility and labeling requirements in 16 CFR part 1250, Safety Standard Mandating ASTM F963 for Toys. However, some consumer products that are not toys subject to the toy standard are considered children's products. A ''children's product'' is a consumer product that is ''designed or intended primarily for children 12 years of age or younger.'' 15 U.S.C. 2052(a)(2). The Commission's regulation at 16 CFR part 1200 further interprets the term. Section 14 of the CPSA requires that children's products be tested by a third party conformity assessment body, and that the manufacturer of the product, including an importer, must issue a children's product certificate (CPC). Based on such third party testing, a manufacturer or importer must attest to compliance with the applicable consumer product safety rule by issuing the CPC. The requirement to test and certify children's products falls within the definition of ''collection of information,'' as defined in 44 U.S.C. 3502(3).

The requirements for the CPCs are stated in section 14 of the CPSA, and in the Commission's regulation at 16 CFR parts 1107 and 1110. Among other requirements, each certificate must identify the manufacturer or private labeler issuing the certificate and any third party conformity assessment body, on whose testing the certificate depends, the date and place of manufacture, the date and place where the product was tested, each party's name, full mailing address, telephone number, and contact information for the individual responsible for maintaining records of test results. The certificates must be in English. The certificates must be furnished to each distributor or retailer of the product and to the CPSC, if requested.

The Commission has an OMB control number, 3041–0159, for children's product testing and certification. This proposed rule would amend this collection of information to add testing and certification to the performance requirements for child-resistant battery compartments on children's products (that are not toys) that contain button cell or coin batteries, as well as warnings on the packaging of these children's products, the battery compartment of these children's products, and any accompanying instructions and manuals, as set forth in the proposed rule.

Respondents and Frequency: Respondents include manufacturers and importers of non-toy children's products that contain button cell or coin batteries. Manufacturers and importers must comply with the information collection requirements when children's products that contain button cell or coin batteries are manufactured or imported after the effective date of the rule.

Estimated Burden: CPSC has estimated the respondent burden in hours, and the estimated labor costs to the respondent.

Estimate of Respondent Burden: The hourly reporting burden imposed on firms that manufacture or import non-toy children's products that contain button cell or coin batteries include the time and cost to maintain records related to third party testing, the time to issue a CPC, and the time to include required warning labels on children's product battery compartments, children's product packaging, and to update instructions or manuals with required warnings.

TABLE 15—ESTIMATED ANNUAL REPORTING BURDEN

Burden type	Total annual reponses	Length of response (hours)	Annual burden (hours)
Third-party testing, recordkeeping and record maintenance	6,046	5.0	30,230
Certification and labeling	1,209	1.0	1,209
Total Burden			31,439

Three types of third party testing of children's products are required: certification testing, material change testing, and periodic testing. Requirements state that manufacturers must conduct sufficient testing to ensure that they have a high degree of assurance that their children's products comply with all applicable children's product safety rules before such products are introduced into commerce. If a manufacturer conducts periodic testing, they are required to keep records that describe how the samples of periodic testing are selected.

CPSC estimates that 0.4 percent of all children's products sold annually, or 6,046 children's products, are children's products that contain button cell or coin batteries and would be subject to third-party testing, for each of which 5.0 hours of recordkeeping and record maintenance will be required. Thus, the total hourly burden of the recordkeeping associated with certification is 30,230 hours ($5.0 \times 6{,}046$).

Additionally, battery compartments, product packaging, and instructions and manuals must be updated to include the required warnings statements. We estimate that the time required to make these modifications is about 1 hour per product. Based on an evaluation of a sample of supplier product lines, there are a total of 1,209 affected products; therefore, the estimated burden associated with warnings and labeling is 1 hour per product × number of product lines = 1,209 hours. We estimate the hourly compensation for the time required to create and update labels is $36.80 (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' Sept. 2022, total compensation for all sales and office workers in goods-producing private industries: *https://www.bls.gov/news.release/archives/ecec_12152022.pdf*). Therefore, the estimated annual cost to industry associated with the labeling requirements is $1,156,955

[16] For purposes of Reese's Law, a ''toy product'' is ''any object designed, manufactured, or marketed as a plaything for children under 14 years of age.'' 15 U.S.C. 2056e Notes.

($36.80 per hour × 31,439 hours = $1,156,955.2). No operating, maintenance, or capital costs are associated with the collection.

This burden estimate is the largest reasonably possible, assuming that every manufacturer had to modify three product labels (battery compartment, packaging, and instructions/manual). However, based on staff's review of non-toy children's products that contain button cell or coin batteries, many of these products already contain some type of warning on the product or product packaging. Accordingly, staff believes it possible that product modification for warnings and any associated burden could be very low.

Under the OMB's regulations (5 CFR 1320.3(b)(2)), the time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the ''normal course of their activities'' are excluded from a burden estimate, where an agency demonstrates that the disclosure activities required to comply are ''usual and customary.'' If warning statements on one or more battery compartments, product packaging, and instructions/manuals is usual and customary for non-toy children's products that contain button cell or coin batteries, CPSC could estimate that no burden hours are associated with the labeling requirements in the proposed rule, because any burden associated with warning labels would be ''usual and customary'' and not within the definition of ''burden'' under the OMB's regulations. We request comments on this potential estimate of no burden for warning labels, or any aspect of labeling. We also request comment on the preliminary analysis demonstrating that the largest possible burden estimate for the proposed standard to require warning labels is 1,209 hours at a cost of $44,491 annually.

The total estimated burden associated with the proposed rule on non-toy children's products that contain a button cell or coin battery for third party testing, recordkeeping, issuing a certificate (CPC), and placing the required warning statements on the battery compartment of the children's product, on the packaging of the children's product, and on any associated instructions or manuals is 31,439 labor hours annually.

Labor Cost of Respondent Burden. According to the U.S. Bureau of Labor Statistics (BLS), Employer Costs for Employee Compensation, the total compensation cost per hour worked for all private industry workers was $39.61 (September 2022, *https://www.bls.gov/ncs/ect/*). Based on this analysis, CPSC staff estimates that labor cost of respondent burden would impose a cost to industry of approximately $1,245,299 annually (31,439 hours × $39.61 per hour = $1,245,298.79).

Cost to the Federal Government. The estimated annual cost of the information collection requirements to the Federal Government is approximately $4,448, which includes 60 staff hours to examine and evaluate the information, as needed, for Compliance activities. This is based on a GS–12, step 5 level salaried employee. The average hourly wage rate for a mid-level salaried GS–12 employee in the Washington, DC metropolitan area (effective as of January 2023 is $51.15 (GS–12, step 5). This represents 69.0 percent of total compensation (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' September 2022, Table 2., percentage of wages and salaries for all civilian management, professional, and related employees: *https://www.bls.gov/news.release/archives/ecec_12152022.pdf*). Adding an additional 31.0 percent for benefits brings average annual compensation for a mid-level salaried GS–12 employee to $74.13 per hour. Assuming that approximately 60 hours will be required annually, this results in an annual cost of $4,448 ($74.13 per hour × 60 hours = $ 4,447.8).

Comments. CPSC has submitted the information collection requirements of this proposed rule to OMB for review in accordance with PRA requirements. 44 U.S.C. 3507(d). CPSC requests that interested parties submit comments regarding information collection to the Office of Information and Regulatory Affairs, OMB (see the **ADDRESSES** section at the beginning of this NPR).

Pursuant to 44 U.S.C. 3506(c)(2)(A), the Commission invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of CPSC's functions, including whether the information will have practical utility;
- The accuracy of CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, utility, and clarity of the information the Commission proposes to collect;
- Ways to reduce the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology;
- The estimated burden hours associated with labels and hang tags, including any alternative Estimates; and
- The estimated respondent cost other than burden hour cost.

XIII. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that when a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a standard or regulation that prescribes requirements for the performance, composition, contents, design, finish, construction, packaging, or labeling of such product dealing with the same risk of injury unless the state requirement is identical to the Federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances.

Section 2(a) of Reese's Law requires the Commission to issue a ''consumer product safety standard for button cell or coin batteries and consumer products containing button cell or coin batteries,'' and section 2(c) of Reese's Law states that a consumer product safety standard promulgated under subsection (a) shall be treated as a consumer product safety rule promulgated under section 9 of the CPSA (15 U.S.C. 2058). Therefore, the preemption provision of section 26(a) of the CPSA would apply to a final rule issued under section 2 of Reese's Law. 15 U.S.C. 2056e. A notification requirement under section 27(e) of the CPSA is not a consumer product safety rule and would not be subject to the preemption provision in section 26(c) of the CPSA.

XIV. Request for Comments

The Commission requests comment on all aspects of the proposed rule, including specifically the following items:

A. Performance Requirements

- Whether any consumer products (as opposed to medical devices, such as hearing aids) contain zinc-air button cell or coin batteries, and whether such products should be required to meet the performance requirements for battery compartments on consumer products;
- Whether any voluntary standard meets the performance and labeling requirements of Reese's Law;
- Whether the requirements for accessibility of battery compartments should incorporate test methods commonly used on toy products, such as the torque and tensile tests for parts of the product that can be gripped by a child's fingers or teeth, or a tensile test for pliable materials;

• For consumer products that use button cell or coin batteries and have large panel doors, what consumer products have such doors, and should the Commission exclude large panel doors from the requirement for captive screws; why or why not (*i.e.,* why does a large panel door represent a different risk of injury from battery access without using captive screws than a smaller battery compartment door does?);

• Whether a double-action locking mechanism used to secure battery compartment enclosures, meaning those mechanism that rely on two independent and simultaneous hand movements to open (versus a screw, for example), should be allowed to secure button cell or coin battery compartments;

• Whether the proposed secureness test based on UL 4200A is sufficient to address reasonably foreseeable use and abuse of consumer products containing non-removable batteries;

• Whether Test Probe 11 of the Standard for Protection of Persons and Equipment by Enclosures—Probes for Verification, IEC 61032, is adequate to verify accessibility of a button cell or coin battery in a battery compartment;

• Whether there are any additional performance requirements that should be considered, either for specific types of products, or in general;

• Whether one or more performance requirements should be based on IEC 62368–1, in addition to, or instead of, performance requirements based on UL 4200A; and

• Whether the proposed performance requirements are needed and are likely to eliminate or adequately reduce the ingestion hazard associated with access to button cell or coin batteries from consumer products.

B. Marking and Labeling Requirements

• Whether the Commission should require ingestion warnings on zinc-air button cell or coin battery packaging;

• Whether all button cell or coin battery packaging should include the warning on the principal display panel;

• Whether the requirement for the ''Keep Out of Reach'' icon to be 20 mm in diameter for visibility purposes, when alone on the front of battery packaging, provides a sufficient warning of the ingestion hazard;

• Whether the requirement to provide other information related to the safety of button cell or coin batteries is sufficient to address the risk of ingestion and other hazards associated with button cell or coin batteries;

• For technical and performance data related to the safety of button cell or coin batteries required at the time of purchase, whether the proposed warnings' content and location requirements are adequate to advise consumers who purchase a product online or in-store about the hazards associated with these batteries;

• Whether staff's assessment in V.F of this preamble that virtually all consumer products can accommodate either the full warning or one of the scaled icons is accurate;

• Whether the rule should require button cell or coin batteries to be durably and indelibly marked with the ''Keep Out of Reach'' icon where size permits, at a minimum size of 6 mm in diameter, and if so, whether the appropriate legal authority is Reese's Law, section 27(e) of the CPSA, or another statute; and

• Whether the internationally recognized safety alert symbol, as shown in yellow color, indicating the presence of a button cell or coin battery, should be required on all consumer products containing such batteries.

C. Other Comments

• Whether a later or an earlier effective date would be appropriate to comply with the proposed requirements and to provide specific information to support such a later or an earlier effective date.

• In the IRFA, the number of small firms impacted and expected cost impact on small firms (as a percentage of annual revenue) of the proposed rule.

Submit all comments in accordance with the instructions in the **ADDRESSES** section at the beginning of this document.

List of Subjects

16 CFR Part 1112

Administrative practice and procedure, Audit, Consumer protection, Reporting and recordkeeping requirements, Third party conformity assessment body.

16 CFR Part 1263

Batteries, Consumer protection, Imports, Infants and children, Labeling, Law enforcement.

For the reasons discussed in the preamble, the Commission proposes to amend Title 16 of the Code of Federal Regulations as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

■ 1. The authority citation for part 1112 is revised to read as follows:

Authority: 15 U.S.C. 2063; 15 U.S.C. 2051 Notes.

■ 2. Amend § 1112.15 by adding paragraph (b)(55) to read as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule or test method?

* * * * *

(b) * * *

(55) 16 CFR part 1263, Safety Standard and Notification Requirements for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries.

* * * * *

■ 3. Add part 1263 to read as follows:

PART 1263—SAFETY STANDARD AND NOTIFICATION REQUIREMENTS FOR BUTTON CELL OR COIN BATTERIES AND CONSUMER PRODUCTS CONTAINING SUCH BATTERIES

Sec.
1263.1 Scope, purpose, effective date, units, exemption.
1263.2 Definitions.
1263.3 Requirements for consumer products containing button cell or coin batteries.
1263.4 Requirements for marking and labeling.
1263.5 Severability.

Authority: 15 U.S.C. 2052, 2056e, 2058, 2076(e).

§ 1263.1 Scope, purpose, effective date, units, and exemption.

(a) *Scope and purpose.* As required by Reese's Law (15 U.S.C. 2056e, Pub. L. 117–171), this part establishes performance requirements for child-resistant button cell or coin battery compartments on all consumer products that contain, or are designed to contain, such batteries to prevent child access to batteries during reasonably foreseeable use and misuse of the consumer product. The rule is intended to eliminate or adequately reduce the risk of injury and death to children 6 years old and younger from ingesting these batteries. This part also establishes warning label requirements for packaging containing button cell or coin batteries, packaging of consumer products containing such batteries, consumer products, instructions and manuals accompanying consumer products, as well as point-of-sale performance and technical data pursuant to section 27(e) of the Consumer Product Safety Act (15 U.S.C. 2076(e).

(b) *Effective date.* Except as provided in paragraph (d) of this section, all consumer products containing button cell or coin batteries and all packaging containing button cell or coin batteries subject to the rule that are manufactured or imported after [180 DAYS AFTER

PUBLICATION IN THE **FEDERAL REGISTER**] must comply with the requirements of this part.

(c) *Units.* In this part, values stated without parentheses are the requirement. Values in parentheses are approximate information.

(d) *Exemption for toy products.* Any object designed, manufactured, or marketed as a plaything for children under 14 years of age that is in compliance with the battery accessibility and labeling requirements of 16 CFR part 1250, Safety Standard Mandating ASTM F963 for Toys, is exempt from the requirements of this part.

(e) *Batteries that do not present an ingestion risk.* Button cell or coin batteries that the Commission has determined do not present an ingestion risk are not subject to this rule. These are: zinc-air button cell or coin batteries.

§ 1263.2 Definitions.

In addition to the definitions given in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) and section 5 of Reese's Law (15 U.S.C. 2056e Notes), the following definitions apply for purposes of this part:

Accessibility probe means Test Probe 11 in IEC 61032 Protection of Persons and Equipment by Enclosures—Probes for Verification.

Accessible means able to be contacted by the accessibility probe.

Button cell or coin battery means:

(1) A single cell battery with a diameter greater than the height of the battery; or

(2) Any other battery, regardless of the technology used to produce an electrical charge, that is determined by the Commission to pose an ingestion hazard.

Consumer product containing button cell or coin batteries means a consumer product containing or designed to use one or more button cell or coin batteries, regardless of whether such batteries are intended to be replaced by the consumer or are included with the product or sold separately.

Ingestion hazard means a hazard caused by a person swallowing or inserting a button cell or coin battery into their body whereby:

(1) The button cell or coin battery can become lodged in the digestive tract or airways; and

(2) Can potentially cause death or serious injury through choking, generation of hazardous chemicals, leaking of hazardous chemicals, electrical burns, pressure necrosis, or other means.

Principal display panel means the display panel, for a retail package of one or more button cell or coin batteries or retail package of a consumer product containing button cell or coin batteries, that is most likely to be displayed, shown, presented, or examined under normal or customary conditions of display for retail sale. The principal display panel is typically the front of the package.

Product display panel means the surface area on, near, or in the battery compartment of a consumer product containing button cell or coin batteries. For consumer products containing button cell or coin batteries where such batteries are replaceable, the product display panel must be visible while a consumer installs or replaces any button cell or coin battery. For consumer products with one or more nonreplaceable button cell or coin batteries, the product display panel must be visible upon access to the battery compartment.

Secondary display panel means a display panel for a retail package of one or more button cell or coin batteries or retail package of a consumer product containing button cell or coin batteries that is opposite or next to the principal display panel. The secondary display panel is typically the rear or side panels of the package.

§ 1263.3 Requirements for consumer products containing button cell or coin batteries.

(a) *General.* Consumer products containing button cell or coin batteries must meet the performance and labeling requirements in this part to minimize the risk of children accessing and ingesting button cell or coin batteries. Consumer products with battery compartments that allow consumers to remove or replace a button cell or coin battery must comply with the performance requirements in paragraph (b) of this section. Consumer products with battery compartments that do not allow for the removal or replacement of any button cell or coin batteries must comply with the performance requirements in paragraph (c) of this section.

(b) *Performance requirements for consumer products containing button cell or coin batteries that are removable.* (1) A removable or replaceable button cell or coin battery in a consumer product must not be made accessible when tested pursuant to paragraph (d) of this section.

(2) Battery compartments for removable or replaceable button cell or coin batteries must meet the requirements in paragraph (e) of this section and be secured using at least one of the following methods:

(i) Secure the battery compartment enclosure so that it requires a tool, such as a screwdriver or coin, to open the battery compartment. Opening a battery compartment secured by one or more screws, or a twist-on access cover, must require a minimum torque of 0.5 Nm (4.4 in-lb) and a minimum angle of 90 degrees of rotation, or the fastener(s) must engage a minimum of two full threads. Screws or fasteners used to secure the battery compartment enclosure must be captive to the compartment door, cover, or closure.

(ii) Secure the battery compartment enclosure so that it requires a minimum of two independent and simultaneous hand movements to open. The movements to open cannot be combinable to a single movement with a single finger or digit.

(c) *Performance requirements for consumer products containing button cell or coin batteries that are non-removable.* Consumer products containing button cell or coin batteries not intended for removal or replacement must be made inaccessible by:

(1) Using a battery compartment enclosure that complies with the performance requirements of paragraph (b) of this section; or

(2) Securing the button cell or coin battery using soldering, fasteners such as rivets, or equivalent means, that passes the Secureness Test in paragraph (f) of this section.

(d) *Accessibility test method.* This test assesses whether a child can access a button cell or coin battery installed in a consumer product by determining whether the accessibility probe can contact a button cell or coin battery. The test method is as follows:

(1) To determine whether a button cell or coin battery is accessible, first open and remove any part of the battery compartment enclosure that can be opened or removed without a tool or that can be opened or removed with anything less than two independent and simultaneous movements (for example, a zipper or hook and loop).

(2) If a part of the battery compartment enclosure is protected by pliable material such as fabric, paper, foam, or vinyl, or a pliable material with a seam, apply the Tension Test for Seams in Stuffed Toys and Beanbag-Type Toys test in 16 CFR part 1250 to determine whether the battery compartment enclosure can become exposed or accessible, using a force of at least 70.0 N (15.7 lbf). If a new part of the battery compartment enclosure becomes exposed or accessible, repeat the test in paragraph (d)(1) of this section and the test in this paragraph (d)(2) until no new part of the battery

compartment enclosure becomes exposed or accessible, and then conduct the test in paragraph (d)(3) of this section.

(3) Insert or apply the accessibility probe to any depth that a battery compartment opening will permit, and rotate or angle the accessibility probe before, during, and after insertion or application through the battery compartment opening to any position that is necessary to determine whether the probe can contact the button cell or coin battery. This test is not intended to judge the strength of the material comprising the battery compartment. Use the minimum force necessary in determining whether the probe can contact a button cell or coin battery.

(e) *Performance tests for consumer products containing button cell or coin batteries.* After pre-conditioning in accordance with paragraph (e)(1) of this section, consumer products containing a button cell or coin battery must pass the performance requirements in paragraph (e)(2) or (f) of this section in the order presented, as applicable.

(1) *Pre-conditioning.* Subject each test sample consumer product to applicable pre-conditioning:

(i) *Stress relief.* Subject each sample consumer product with a battery compartment enclosure, door/cover, or door/cover opening mechanism that is made from molded or formed thermoplastic materials to a stress relief test. Place each test sample consumer product in a circulating air oven for at least 7 hours, using an oven temperature of the higher of at least 70°C (158 °F) or at least 10°C (18 °F) higher than the maximum temperature of thermoplastic battery compartment enclosures, doors/covers, or door/cover opening mechanisms during the most stringent normal operation of the consumer product. Allow the sample consumer product to cool to room temperature after removal from the oven.

(ii) *Battery replacement.* This step applies only to consumer products with button cell or coin batteries intended to be removable or replaceable. Open the battery compartment enclosure, remove and replace the button cell or coin battery, and close the battery compartment enclosure for a total of 10 cycles. For battery compartment enclosures that are secured with a screw(s), the screw(s) must be loosened and then tightened each time using a suitable screwdriver, applying a continuous linear torque according to the Torque to be Applied to Screws table, Table 20, of the Standard for Audio, Video and Similar Electronic Apparatus—Safety Requirements, UL 60065. If the screw(s) do not meet the specified torque requirements during this step, remove the screw(s) and repeat the test in paragraph (d) of this section.

(2) *Abuse tests.* Subject each test sample consumer product to the following abuse tests, performed sequentially, as applicable. Check compliance of the sample using paragraph (e)(3) of this section. If the consumer product contains button cell or coin batteries that are not intended for removal or replacement, and that are accessible based on paragraph (c) of this section, then the consumer product must be tested under paragraph (f) of this section and this paragraph (e)(2) does not apply.

(i) *Drop test.* Drop each sample consumer product ten times from a height of 1.0 m (39.4 in) onto a horizontal hardwood surface in positions likely to produce the maximum force on the battery compartment enclosure. The hardwood surface must be at least 13 mm (0.5 in) thick, mounted on two layers of nominal 19 mm (0.75 in) thick plywood, and placed on a concrete or equivalent non-resilient surface.

(ii) *Impact test.* Subject the battery compartment enclosure door or cover on each sample consumer product to three, at least 2–J (1.5-ft·lbf) impacts. Produce the impact by dropping a steel sphere, 50.8 mm (2 in) in diameter, and weighing approximately 0.5 kg (1.1 lb) from the height required to produce the specified impact, as shown in figure 1 to this paragraph (e)(2)(ii), or suspend the steel sphere by a cord and swing as a pendulum, dropping through the vertical distance required to cause the steel sphere to strike the battery compartment enclosure door or cover with the specified impact, as shown in figure 2 to this paragraph (e)(2)(ii). The steel sphere must strike the battery compartment enclosure door or cover perpendicular to the surface of the battery compartment enclosure.

Figure 1 to Paragraph (e)(2)(ii). Example Impact Test With a Dropped Steel Sphere.

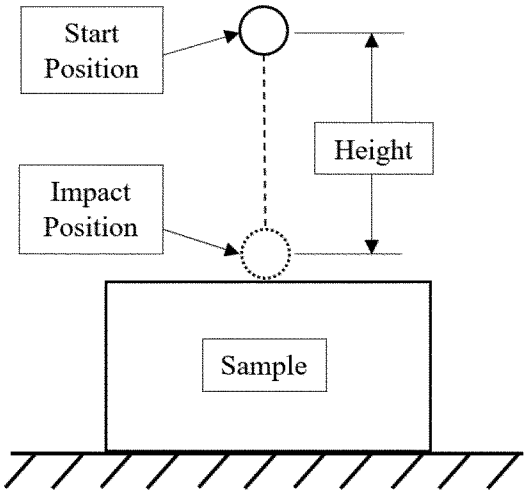
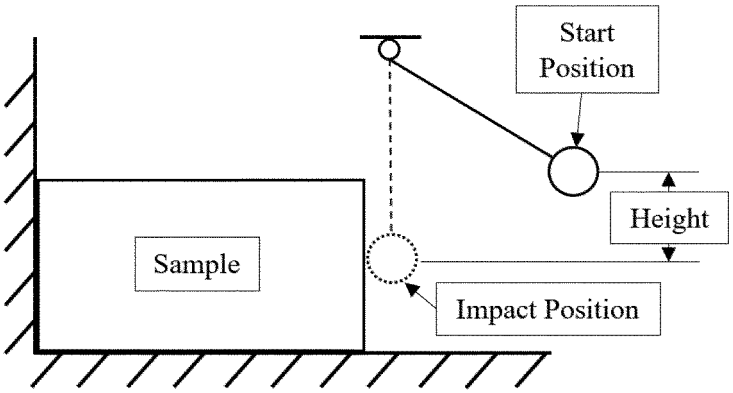


Figure 2 to Paragraph (e)(2)(ii). Impact Test With a Swinging Steel Sphere.



(iii) *Crush test.* Support each sample consumer product by a fixed rigid supporting surface, in positions likely to produce the most adverse results as long as the position of the consumer product is self-supported. Apply a crushing force of at least 335 N (75.3 lbf) to the exposed surface for a period of 10 seconds. Apply the force using a flat surface measuring approximately 100 by 250 mm (3.9 by 9.8 in).

(iv) *Compression test.* If any surface of the battery compartment enclosure is accessible to a child and inaccessible to a flat surface contact during the drop test, apply the Compression Test from 16 CFR part 1250 to that surface, using a force of at least 136 N (30.6 lbf).

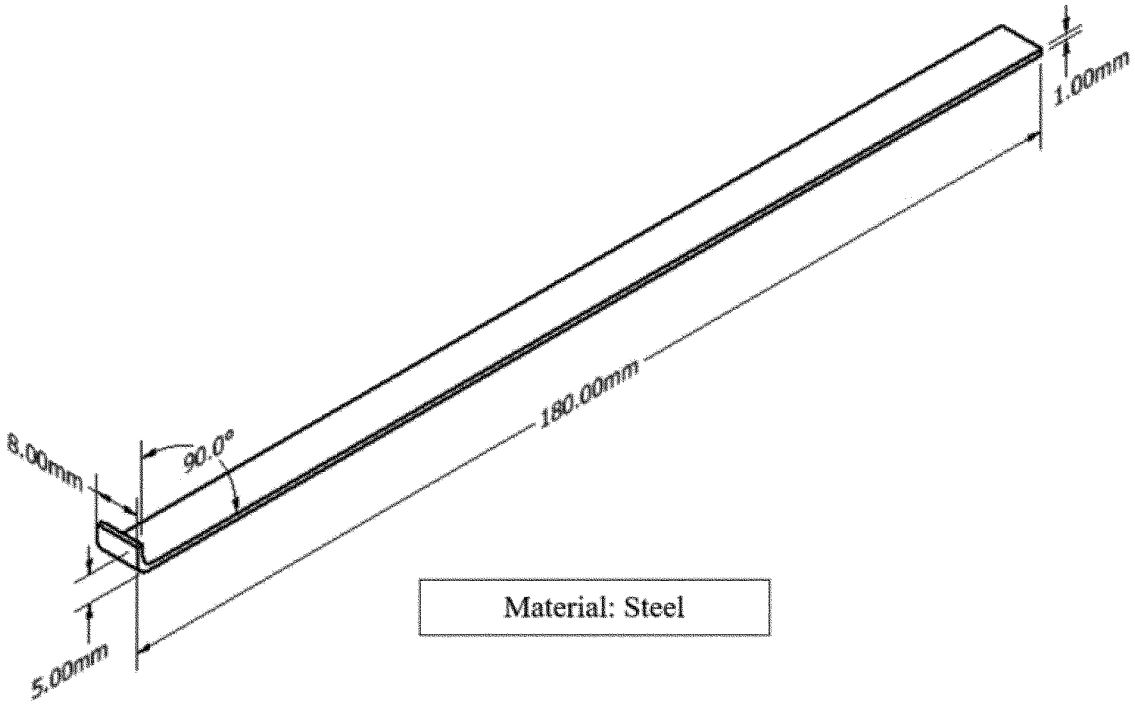
(v) *Torque test.* If a child can grasp any part of the battery compartment enclosure on a sample consumer product, including the door or cover, with at least the thumb and forefinger, or using teeth, apply the Torque Test for Removal of Components from 16 CFR part 1250 to the battery compartment enclosure, using a torque of at least 0.50 Nm (4.4 in.-lbf).

(vi) *Tension test.* If a child can grasp any part of the battery compartment enclosure on a sample consumer product, including the door or cover, with at least the thumb and forefinger, or using teeth, apply the Tension Test for Removal of Components from 16 CFR part 1250 to the battery compartment enclosure, using a force of at least 72.0 N (16.2 lbf).

(3) *Compliance.* If a button cell or coin battery becomes accessible or liberates from a consumer product as a result of any of the abuse tests in paragraph (e)(2) of this section, the consumer product is non-compliant and fails testing. Additionally, after completing all abuse testing, apply a force of at least 50 N (11.2 lbf) for 10 seconds to the battery compartment enclosure door or cover using the accessibility probe. Apply the accessibility probe at the most unfavorable position on the battery compartment enclosure, and in the most unfavorable direction. Apply a force in only one direction at a time. If the battery compartment enclosure door or cover opens or does not remain functional, or the button cell or coin battery becomes accessible, the consumer product is non-compliant and fails testing.

(f) *Secureness test.* Button cell or coin batteries installed in a consumer product that are not intended for removal or replacement, and that are accessible based on paragraph (d) of this section, must be tested by applying a steel test hook, as shown in figure 3 to this paragraph (f), using a force of at least 22 N (4.9 lbf), directed outwards, applied for 10 seconds at all points where application of a force is possible. To pass the test, the button cell or coin battery cannot liberate from the consumer product during testing.

Figure 3 to Paragraph (f). Secureness Test Hook for Consumer Products With Accessible Button Cell or Coin Batteries not Intended for Removal or Replacement.



§ 1263.4 Requirements for marking and labeling.

(a) *General Requirements.* (1) All warning statements or icons must be clearly visible, prominent, legible, and permanently marked.

(2) Warning statements or icons must be in contrasting color to the background onto which the warning statement or icon is printed.

(3) Warning statements must be in English.

(4) The safety alert symbol, an exclamation mark in a triangle, when used with the signal word, must precede the signal word. The base of the safety alert symbol must be on the same horizontal line as the base of the letters of the signal word. The height of the safety alert symbol must equal or exceed the signal word letter height.

(5) The signal word ''WARNING'' must be in black letters on an orange background. The signal word must appear in sans serif letters in upper case only.

(6) Certain text in the message panel must be in bold and in capital letters as shown in the example warning labels to get the attention of the reader.

(7) For labels that are provided on a sticker, hang tag, instructions or manual, the safety alert symbol and the signal word ''WARNING'' must be at least 0.2 in. (5 mm) high. The remainder of the text must be in characters whose upper case must be at least 0.1 in. (2.5 mm), except where otherwise specified.

(8) For labels that are required to be on the packaging of button cell and coin batteries, the packaging of consumer products containing such batteries, and directly on consumer products, text size must be dependent on the area of the principal display panel. Text size must be determined based on table 1 to this paragraph (a)(8).

TABLE 1 TO PARAGRAPH (a)(8)—LETTER SIZE FOR RECOMMENDED WARNING LABELS

[Information based on 16 CFR 1500.19(d)(7)]

Letter Size Measurements in Inches

Display Area: Inches ^{2}	0–2	+2–5	+5–10	+10–15	+15–30	+30–100	+100–400	+400
Signal word (WARNING)	3/64	1/16	3/32	7/64	1/8	5/32	1/4	1/2
Statement of Hazard	3/64	3/64	1/16	3/32	3/32	7/64	5/32	1/4
Other Text	1/32	3/64	1/16	1/16	5/64	3/32	7/64	5/32

Letter Size Measurements in cm (For Reference Only)

Display Area: cm^2	0–13	+13–32	+32–65	+65–97	+97–194	+194–645	+645–2,581	+2,581
Signal word (WARNING)	0.119	0.159	0.238	0.278	0.318	0.397	0.635	1.270
Statement of Hazard	0.119	0.119	0.159	0.238	0.238	0.278	0.397	0.635

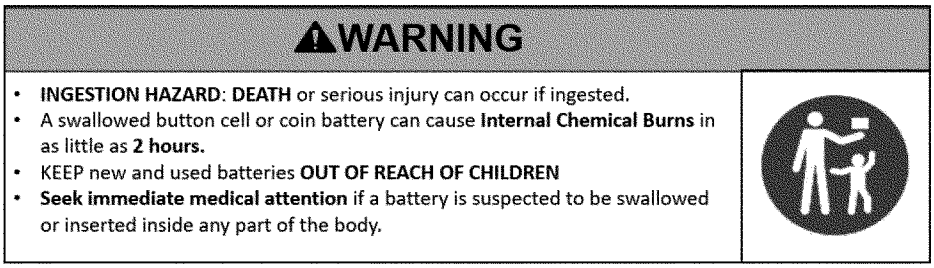
TABLE 1 TO PARAGRAPH (a)(8)—LETTER SIZE FOR RECOMMENDED WARNING LABELS—Continued

[Information based on 16 CFR 1500.19(d)(7)]

Other Text	0.079	0.119	0.159	0.159	0.198	0.238	0.278	0.397

(b) *Warning label requirements for button cell or coin battery packaging.* (1) The principal display panel of the packaging must include the warning label in figure 4 to this paragraph (b)(1). The icon must be at least 8 mm (0.3 inches) in diameter. The text must state the following warnings as shown on figure 4 to this paragraph (b)(1).

Figure 4 to Paragraph (b)(1)



(2) If space prohibits the full warning label shown in Figure 4 to paragraph (b)(1), place the icon shown in figure 5 to this paragraph (b)(2) on the principal display panel with the text shown in figure 6 to this paragraph (b)(2) on the secondary display panel. The icon must be at least 20 mm in diameter. The text must state the following warnings as shown on figure 6 to this paragraph (b)(2):

Figure 5 to Paragraph (b)(2)

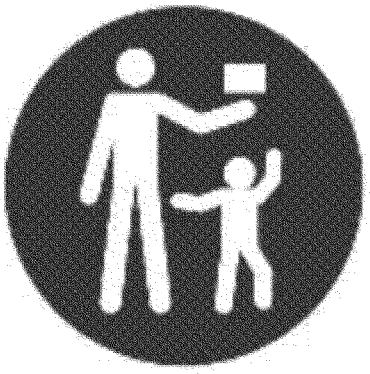
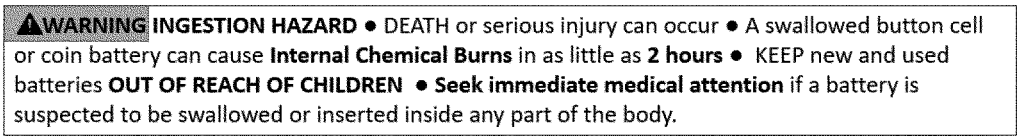


Figure 6 to Paragraph (b)(2)



(3) The following safety-related statements must be included on the principal display panel or secondary display panel:

(i) The statement: Keep in original package until ready to use.

(ii) The statement: Immediately dispose of used batteries and keep away from children. Do NOT dispose of batteries in household trash.

(iii) The statement: Call a local poison control center for treatment information.'';

(iv) Battery type (*e.g.,* LR44, CR2032);

(v) Battery chemistry (*e.g.,* silver oxide or lithium);

(vi) Nominal voltage;

(vii) Year and month or week of manufacture or expiration date;

(viii) Name or trademark of the manufacturer or supplier;

(ix) The statement: ''Do not mix old and new batteries, different brands or types of batteries, such as alkaline, carbon-zinc, or rechargeable batteries.'';

(x) The statement: ''Ensure the batteries are installed correctly according to polarity (+ and -).'';

(xi) The statement: ''Remove and immediately discard batteries from equipment not used for an extended period of time.'';

(xii) The statement: ''Non-rechargeable batteries are not to be recharged.''; and

(xiii) The statement: ''Do not force discharge, recharge, disassemble, heat above (manufacturer's specified temperature rating) or incinerate. Doing so may result in injury due to venting, leakage or explosion resulting in chemical burns.''.

(xiv) For button cell or coin batteries that are packaged and included separately with a consumer product, only paragraphs (b)(1) and (2) of this section apply.

(c) *Warning label requirements for packaging of consumer products*

containing button cell or coin batteries. (1) The principal display panel must contain the warning label in figure 7 to this paragraph (c)(1). The icon must be at least 8 mm in diameter. The text must state the following as shown in figure 7 to this paragraph (c)(1):

Figure 7 to Paragraph (c)(1)

⚠WARNING

- **INGESTION HAZARD**: This product contains a button cell or coin battery.
- **DEATH** or serious injury can occur if ingested.
- A swallowed button cell or coin battery can cause **Internal Chemical Burns** in as little as **2 hours.**
- KEEP new and used batteries **OUT OF REACH OF CHILDREN**
- **Seek immediate medical attention** if a battery is suspected to be swallowed or inserted inside any part of the body.

(2) Consumer products that are not contained in packaging must have the warning label in Figure 7 to paragraph (c)(1) affixed to the consumer product with a hang tag or a sticker label.

(3) If space on the principal display panel of the consumer product packaging does not permit the warning label in Figure 7 to paragraph (c)(1), the principal display panel must include the warning in figure 8 to this paragraph (c)(3) in a conspicuous location. The icon must be at least 8 mm in diameter. The remaining warning statements must be on a secondary display panel, as shown in figure 9 to this paragraph (c)(3). The text must state the following on the principal display panel as shown in figure 8 to this paragraph (c)(3):

Figure 8 to Paragraph (c)(3)

⚠WARNING

- **INGESTION HAZARD**: This product contains a button cell or coin battery.
- **DEATH** or serious injury can occur if ingested.
- A swallowed button cell or coin battery can cause **Internal Chemical Burns** in as little as **2 hours.**

Figure 9 to Paragraph (c)(3)

⚠WARNING

- KEEP new and used batteries **OUT OF REACH OF CHILDREN**
- **Seek immediate medical attention** if a battery is suspected to be swallowed or inserted inside any part of the body.

(4) The text must state the following on the secondary display panel as shown in Figure 9 to paragraph (c)(3).

(5) The principal display panel or secondary display panel of the consumer product packaging, or if there is no consumer product packaging, the accompanying hang tag or sticker label, must include the following text:

(i) For products with non-replaceable batteries, include a statement indicating the product contains non-replaceable batteries;

(ii) Battery type (*e.g.,* LR44, CR2032); and

(iii) Nominal voltage.

(d) *Warning label requirements for consumer products containing button cell or coin batteries.*

(1) Consumer products must be durably and indelibly marked with a warning label on the product display panel that alerts the consumer of the presence of a button cell or coin battery. The warning text must include the safety alert symbol, signal word, and text, as shown in figure 10 to this paragraph (d)(1).

Figure 10 to Paragraph (d)(1)

⚠WARNING | **INGESTION HAZARD:** This product contains a button cell or coin battery.

(2) If space on the product is limited, use the ''Warning: contains coin battery'' icon shown in figure 11 to this paragraph (d)(2), without text. The icon must be at least 7 mm in width and 9 mm in height and must be on the

product display panel and must be in yellow with black outlines as shown in figure 11 to this paragraph (d)(2). The icon must be defined in accompanying printed materials such as instructions, manual, insert, or hangtag.

Figure 11 to Paragraph (d)(2)

(3) If the product itself is too small to include the warning with text in Figure 10 to paragraph (d)(1) or the icon in Figure 11 to paragraph (d)(2), the product must:

(i) Have packaging containing the warning label following the requirements in paragraph (c) of this section; or

(ii) Contain a hangtag or sticker label with the full warning label using requirements for the packaging of consumer products containing batteries in paragraph (c) of this section.

(e) *Instructions/Manuals accompanying consumer products containing button cell and coin batteries.* (1) Instructions and manuals, if provided, must include the warning label shown in Figure 7 to paragraph (c)(1) and the following warning statements:

(i) The statement: ''Immediately dispose of used batteries and keep away from children. Do NOT dispose of batteries in household trash.'';

(ii) The statement: ''Even used batteries may cause severe injury or death.'';

(iii) The statement: ''Call a local poison control center for treatment information.'';

(iv) Compatible battery type (*e.g.,* LR44, CR2032);

(v) Nominal voltage;

(vi) For products with non-replaceable batteries, include a statement indicating the product contains non-replaceable batteries;

(vii) The statement: ''Do not mix old and new batteries, different brands or types of batteries, such as alkaline, carbon-zinc, or rechargeable batteries.'';

(viii) The statement: ''Ensure the batteries are installed correctly according to polarity (+ and -).'';

(ix) The statement: ''Remove and immediately discard batteries from equipment not used for an extended period of time.'';

(x) The statement: ''Non-rechargeable batteries are not to be recharged.''; and

(xi) The statement: ''Do not force discharge, recharge, disassemble, heat above (manufacturer's specified temperature rating) or incinerate. Doing so may result in injury due to venting, leakage or explosion resulting in chemical burns.''.

(2) If instructions and manuals are not provided, the warning statements in paragraph (e)(1) of this section must be present on the principal display panel or secondary display panel of the consumer product packaging, or if there is no consumer product packaging, the accompanying hang tag or sticker label.

(f) *Online information.* Manufacturers shall include, in a manner that is clearly visible, prominent, and legible (either next to the product description, the product image, or the product price):

(1) in their online materials that enable consumers to purchase button cell or coin batteries, the warning in Figure 4 to paragraph (b)(1); and

(2) in their online materials that enable consumers to purchase products containing button cell or coin batteries, the warning in Figure 7 to paragraph (c)(1).

§ 1263.5 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

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